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GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

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THE

# UNREPEALED GENERAL ACTS

OF THE

# GOVERNOR GENERAL IN COUNCIL,

WITH CHRONOLOGICAL TABLE.

1882.

(Part I; containing Acts II to XII, both inclusive.)

CALCUTTA:
PRINTED BY THE SUPERINTENDENT OF GOVERNMENT PRINTING, INDIA
1885.

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# PREFACE.

THIS volume is published under the authority of the Government of India, and contains such of the unrepealed Acts of the Governor General in Council passed in the year 1882, down to and including Act XII, as extend, or are extendible, to the whole of British India.

2. The volume is founded on the official copies of the Acts preserved in the Legislative Department.

3. The only changes made in reprinting are the following :—

(*a*) Sections which have been entirely repealed have been omitted, but their marginal notes have been retained for easy reference. Parts of sections which have been repealed have been omitted, but a reference to the repeal has been given in footnotes. Words which have only been repealed in particular localities have been retained, but a reference to the repeal has been given in footnotes.

(*b*) Where an Act directs that a section, a clause or words be inserted in a former Act, in reprinting the former Act the insertion has been made, and a reference to the amending Act has been given in footnotes.

(*c*) Where one Act refers to another and such reference is directed by a subsequent Act to be read as if made to the latter Act, the number, year and title of the latter Act have been substituted in the text.

(*d*) Section-numbers occurring in the body of the Acts have been uniformly printed in figures, instead of in words.

(*e*) The number and year of each enactment referred to in the text have been noted on the inner margin for easy reference.

(*f*) In addition to the short title of the Act, the number and title of the chapter, and the sections comprised in the page, have been noted as a heading to each page.

4. Some footnotes have been added. They are chiefly (*a*) cross-references to Indian Acts, and (*b*) references to English Statutes from which Indian Acts have been copied. It is hardly necessary to say that these notes are not authoritative.

5. The Chronological Table prefixed enumerates all Acts of the Governor General in Council passed during the period comprised in this volume, and shows at what pages of the volume those now printed will be found. It also shows whether a given Act has been repealed, wholly, in part, or locally, or amended, and, in the case of unrepealed local Acts, where it is proposed to print them.

6. The greater portion of the work connected with the preparation of this volume has, as in the case of the similar volume for 1877 to 1881, devolved upon Mr. F. G. Wigley of the Legislative Department.

7. A volume containing the remaining Unrepealed General Acts passed during the year 1882 and those passed in the years 1883 and 1884 is now in the Press; and when it is published it is intended to issue a revised edition of the volumes containing the Unrepealed General Acts passed during the years 1834 to 1876.

J. M. MACPHERSON,
*Deputy Secy. to the Govt. of India,*
*Legislative Department.*

CALCUTTA:
*March, 1885.*

## CORRIGENDA.

### *I.—In the volume of Unrepealed General Acts for 1877-1881.*

Page vii. Opposite Act V of 1877, *for* "Printed General Acts, page 75," *substitute* "Rep., XXI of 1884."

Page xii. Opposite Act XXII of 1881, *insert* "Amended, VI of 1885."

Page xiii. Opposite Act XXVI of 1881, *insert* "Rep. in part and amended, II of 1885."

Pages 73 to 87. *Strike out* Act V of 1877.

Page 412. In the second footnote, *for* "Jessore" *substitute* "Khulna" and insert a reference to the *Calcutta Gazette* of 10th September, 1884, Part I, page 940.

Pages 495, 501, 505, 506, 513, 514 and 519. Note the amendments in Act XXVI of 1881 made by Act II of 1885.

### *II.—In the present volume.*

Pages 42, 43, 66 and 67. Note the amendments in Act IV of 1882 made by Act III of 1885.

Pages 53 and 66. Strike out the footnotes.

Pages 57, 62, 79 and 86. *For* each footnote *substitute* the following :—

"* For limitations to the operation of this section, see section 1, *supra*, as amended by Act III of 1885."

# CHRONOLOGICAL TABLE OF ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

## 1882.

(PART I.)

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| Year. | Number. | Subject-matter. | How disposed of. |
|---|---|---|---|
| 1882 | I | Inland Emigration ... | Printed, Lower Provinces Code.<br>" North-Western Provinces Code.<br>" Oudh Code.<br>" Assam Code. |
| " | II | Trusts ... ... | Printed, General Acts, p. 5. |
| " | III | Seditious Publications ... | Printed, General Acts, p. 35. |
| " | IV | Transfer of Property ... | Amended, III of 1885.<br>Printed, General Acts, p. 41. |
| " | V | Easements ... | Printed, Madras Code.<br>" Central Provinces Code.<br>" Coorg Code. |
| " | VI | Companies ... ... | Printed, General Acts, p. 99. |
| " | VII | Powers-of-attorney ... | Printed, General Acts, p. 213. |
| " | VIII | Penal Code Amendment... | Printed, General Acts, p. 214. |
| " | IX | Prisoners Act (V of 1871) Amendment ... | Printed, General Acts, p. 216. |
| " | X | Criminal Procedure ... | Rep. in part, locally, V of 1876.<br>Amended, locally, Regulations III of 1876, sec. 13, and I of 1884, sec. 3.<br>Rep. in part and amended, III of 1884.<br>Printed, General Acts, p. 241. |
| " | XI | Tariff ... ... | Printed, General Acts, p. 509. |
| " | XII | Salt ... ... | Amended, XX of 1884.<br>Printed, General Acts, p. 517. |
| " | XIII | Kánúngos and Patwáris | Printed, North-Western Provinces Code.<br>" Oudh Code. |

THE

# UNREPEALED GENERAL ACTS

OF

# THE GOVERNOR GENERAL IN COUNCIL.

## THE INDIAN TRUSTS ACT, 1882.

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## ACT No. II OF 1882.

*Received the Governor General's assent on the 13th January, 1882.*

# An Act to define and amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows:— Preamble.

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## CHAPTER I.

### PRELIMINARY.

**1.** This Act may be called "The Indian Trusts Act, 1882"; and it shall come into force on the first day of March, 1882. Short title. Commencement.

It extends in the first instance to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjáb, the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam; and the Local Government may from time to time, by notification in the official Gazette, extend it to any other part of British India. But nothing herein contained affects the rules of Muhammadan law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second chapter of this Act applies to trusts created before the said day. Local extent. Savings.

**2.** The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed in the territories to which this Act for the time being extends. Repeal of enactments.

Interpretation-clause. "trust":

"author of the trust":

"trustee":

"beneficiary":

"trust-property":

"beneficial interest":

"instrument of trust":

"breach of trust":

"registered":

"notice."

Expressions defined in Contract Act.

**3.** A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

the person who reposes or declares the confidence is called the "author of the trust":

the person who accepts the confidence is called the "trustee":

the person for whose benefit the confidence is accepted is called the "beneficiary":

the subject-matter of the trust is called "trust-property" or "trust-money":

the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property;

and the instrument, if any, by which the trust is declared is called the "instrument of trust":

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law[a] for the registration of documents for the time being in force: III of 1877.

a person is said to have "notice" of a fact either when he actually knows that fact or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229; IX of 1872.

and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

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## CHAPTER II.

### Of the Creation of Trusts.

Lawful purposes.

**4.** A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it (*a*) is forbidden by law, or (*b*) is of such a nature that, if permitted, it would defeat the provisions of any law, or (*c*) is fraudulent, or (*d*) involves or implies injury to the person or property of another, or (*e*) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

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[a] See Act III of 1877.

EXPLANATION.—In this section, the expression "law" includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

*Illustrations.*

(*a*) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(*b*) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(*c*) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

Trust of immoveable property.

**5.** No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of moveable property.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

Creation of trust.

**6.** Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (*a*) an intention on his part to create thereby a trust, (*b*) the purpose of the trust, (*c*) the beneficiary, and (*d*) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

*Illustrations.*

(*a*) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.

(*b*) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(*c*) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(*d*) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(*e*) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may create trusts.

**7.** A trust may be created—

(*a*) by every person competent to contract, and,

(*b*) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of trust.

**8.** The subject-matter of a trust must be property transferable to the beneficiary.

It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

**9.** Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Who may be trustee.

**10.** Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

[illegible] bound [illegible]

No one is bound to accept a trust.

[illegible]nce

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

*Illustrations.*

(*a*) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(*b*) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(*c*) A bequeaths a lákh of rupees to B upon certain trusts and appoints him his executor. B severs the lákh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

## CHAPTER III.

### Of the Duties and Liabilities of Trustees.

Trustee to execute trust.

**11.** The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (*a*) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (*b*) in the case of debts not bearing interest, to make such payment without interest.

*Illustrations.*

(*a*) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(*b*) A, a trustee of certain land for X, Y and Z, is authorized to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(*c*) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent, and B requests A to make the loan. A may refuse to make it.

Trustee to inform himself of state of trust-property

**12.** A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the

instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

*Illustrations.*

(*a*) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(*b*) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

Trustee to protect title to trust-property.

**13.** A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

*Illustration.*

The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877, the trustee's duty is to cause the instrument to be registered. III of 1877.

[illegible] not [illegible] rse [illegible] i-[illegible]

**14.** The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary.

[illegible] ired from trustee.

**15.** A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

*Illustrations.*

(*a*) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(*b*) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is

drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(*c*) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(*d*) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(*e*) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(*f*) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(*g*) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm, in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(*h*) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

Conversion of perishable property.

**16.** Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

*Illustrations.*

(*a*) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

(*b*) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

Trustee to be impartial.

**17.** Where there are more beneficiaries than one the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

*Illustration.*

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

Trustee to prevent waste.

**18.** Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

Accounts and information.

**19.** A trustee is bound (*a*) to keep clear and accurate accounts of the trust-property, and (*b*), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

Investment of trust-money.

**20.** Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others :—

(*a*) in promissory notes, debentures, stock or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland ;

(*b*) in bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India ;

(*c*) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council ;

(*d*) in debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of a legislature, established in British India ;

(*e*) on a first mortgage of immoveable property situate in British India : provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money ; or

(*f*) on any other security expressly authorized by the instrument of trust or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (*d*), (*e*) and (*f*) shall be made without his consent in writing.

Mortgage of land pledged to Government under Land Improvement Act. Deposit in Government Savings Bank.

**21.** Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Act, 1871,[a] or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

XXVI of 1871.

Sale by trustee directed to sell within specified time.

**22.** Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

*Illustration.*

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

Liability for breach of trust.

**23.** Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(*a*) where he has actually received interest:

(*b*) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:

[a] or, where the Land Improvement Loans Act, 1883, is in force, under that Act—see Act XIX of 1883, sections 1 and 2.

(*c*) where the trustee ought to have received interest, but has not done so:

(*d*) where he may be fairly presumed to have received interest:

He is liable, in case (*a*), to account for the interest actually received, and, in cases (*b*), (*c*) and (*d*), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs:

(*e*) where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate:

(*f*) where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

*Illustrations.*

(*a*) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(*b*) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market-price falls. B is answerable to C for the loss.

(*c*) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(*d*) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (*a*), (*b*), (*c*) or (*d*). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(*e*) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(*f*) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the

accumulation which would have arisen from a proper investment of the intermediate dividends.

(*g*) Trust-property is invested in one of the securities mentioned in section 20, clause (*a*), (*b*), (*c*) or (*d*). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(*h*) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

**24.** A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

No set-off allowed to trustee.

**25.** Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability for predecessor's default.

**26.** Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Non-liability for co-trustee's default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(*a*) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(*b*) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require:

(*c*) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Joining in receipt for conformity

*Illustration.*

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property,

and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

Several liability of co-trustees.

**27.** Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Contribution as between co-trustees.

But, as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss; and, if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

**28.** When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to Government.

**29.** When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

[illegible]y [illegible]es.

**30.** Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

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## CHAPTER IV.

### Of the Rights and Powers of Trustees.

Right to title-deeds.

**31.** A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

Right to reimbursement of expenses.

**32.** Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Right to be recouped for erroneous over-payment.

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to indemnity from gainer by breach of trust.

**33.** A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

Right to apply to Court for opinion in management of trust-property.

**34.** Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

Right to settlement of accounts.

**35.** When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

General au-

**36.** In addition to the powers expressly conferred by this Act and by the

thority of trustee.

instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

Every trustee in the actual possession or receipt of the rents and profits of land as defined in the Land Improvement Act, 1871,[a] shall, for the purposes of that Act, be deemed to be a landlord in possession. XXVI of 1871.

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

Power to sell in lots, and either by public auction or private contract.

**37.** Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

Power to sell under special conditions

Power to buy-in and re-sell.

**38.** The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Time allowed for selling trust property.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

*Illustrations.*

(*a*) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(*b*) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

Power to convey

**39.** For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

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[a] This Act is repealed in places in which the Land Improvement Loans Act, 1883, is declared in force—see Act XIX of 1883, sections 1 and 2. The latter Act, however, contains no definition of "land."

**40.** A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature: Power to vary investments.

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

**41.** Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen: Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year. Power to apply property of minors, &c. for their maintenance, &c.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

**42.** Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof. Power to give receipts

**43.** Two or more trustees acting together may, if and as they think fit,— Power to compound, &c.

(*a*) accept any composition or any security for any debt or for any property claimed;

(*b*) allow any time for payment of any debt;

(*c*) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,

(*d*) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorised to execute the trust and power thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

Power to several trustees of whom one disclaims or dies.

**44.** When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Suspension of trustee's powers by decree.

**45.** Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made or, where an appeal against the decree is pending, of the Appellate Court.

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## CHAPTER V.

### Of the Disabilities of Trustees.

Trustee cannot renounce after acceptance.

**46.** A trustee who has accepted the trust cannot afterwards renounce it except (*a*) with the permission of a principal Civil Court of original jurisdiction, or (*b*), if the beneficiary is competent to contract, with his consent, or (*c*) by virtue of a special power in the instrument of trust.

Trustee cannot delegate.

**47.** A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (*a*) the instrument of trust so provides, or (*b*) the delegation is in the regular course of business, or (*c*) the delegation is necessary, or (*d*) the beneficiary, being competent to contract, consents to the delegation.

EXPLANATION.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

*Illustrations.*

(*a*) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of each survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(*b*) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(*c*) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

**48.** When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Co-trustees cannot act singly.

**49.** Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Control of discretionary power.

**50.** In the absence of express directions to the contrary contained in the instrument of trust, or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Trustee may not charge for services.

Nothing in this section applies to any Official Trustee, Administrator General, Public Curator or person holding a certificate of administration.

**51.** A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee may not use trust-property for his own profit.

**52.** No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee for sale or his agent may not buy.

**53.** No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee may not buy beneficiary's interest without permission.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

Trustee for purchase.

Co-trustees may not lend to one of themselves.

**54.** A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

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## CHAPTER VI.

### Of the Rights and Liabilities of the Beneficiary.

Right to rents and profits.

**55.** The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Right to specific execution.

**56.** The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to transfer of possession.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

*Illustrations.*

(*a*) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(*b*) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(*c*) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, &c.

**57.** The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

**58.** The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest: Right to transfer beneficial interest.

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

**59.** Where no trustees are appointed or all the trustees die, disclaim or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee. Right to sue for execution of trust.

**60.** The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons. Right to proper trustees.

EXPLANATION I.—The following are not proper persons within the meaning of this section:—

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

EXPLANATION II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

*Illustrations.*

(*a*) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(*b*) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(*c*) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(*d*) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(*e*) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

Right to compel to any act of duty.

**61.** The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

*Illustrations.*

(*a*) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(*b*) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

Wrongful purchase by trustee.

**62.** Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (*a*) account for the nett profits of the property, (*b*) be charged with an occupation-rent, if he has been in actual possession of the property, and (*c*) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(*a*) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or

(*b*) entitles the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

**63.** Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Following trust-property—into the hands of third persons;

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

into that into which it has been converted.

*Illustrations.*

(*a*) A, a trustee for B of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(*b*) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

**64.** Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

Saving of rights of certain transferees.

(*a*) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or

(*b*) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a *bonâ fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872, section 108, or the liability of a person to whom a debt or charge is transferred.

IX of 1872.

**65.** Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Acquisition by trustee of trust-property wrongfully converted.

**66.** Where the trustee wrongfully mingles the trust property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Right in case of blended property.

**67.** If a partner, being a trustee, wrongfully employs trust-property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

The partners having such notice are jointly and severally liable for the breach of trust.

*Illustrations.*

(*a*) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding-up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(*b*) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

**68.** Where one of several beneficiaries—

(*a*) joins in committing breach of trust, or

(*b*) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(*c*) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(*d*) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

Rights and liabilities of beneficiary's transferee.

**69.** Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

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## CHAPTER VII.

### Of Vacating the Office of Trustee.

Office how vacated.

**70.** The office of a trustee is vacated by his death or by his discharge from his office.

**71.** A trustee may be discharged from his office only as follows:— Discharge of trustee.

(*a*) by the extinction of the trust;

(*b*) by the completion of his duties under the trust;

(*c*) by such means as may be prescribed by the instrument of trust;

(*d*) by appointment under this Act of a new trustee in his place;

(*e*) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(*f*) by the Court to which a petition for his discharge is presented under this Act.

**72.** Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place. Petition to be discharged from trust.

**73.** Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses, or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable, to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by— Appointment of new trustees on death, &c.

(*a*) the person nominated for that purpose by the instrument of trust (if any), or

(*b*) if there be no such person, or no such person able and willing to act, the author of the trust, if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court,

be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

Appointment by Court.

**74.** Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Rule for selecting new trustees.

In appointing new trustees, the Court shall have regard (*a*) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (*b*) to the wishes of the person, if any, empowered to appoint new trustees; (*c*) to the question whether the appointment will promote or impede the execution of the trust, and (*d*), where there are more beneficiaries than one, to the interests of all such beneficiaries.

Vesting of trust-property in new trustees.

**75.** Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

Powers of new trustees.

Every new trustee so appointed, and every trustee appointed by a Court either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

Survival of trust.

**76.** On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise.

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## CHAPTER VIII.

### Of the Extinction of Trusts.

Trust how extinguished.

**77.** A trust is extinguished—

(*a*) when its purpose is completely fulfilled; or

(*b*) when its purpose becomes unlawful; or

(*c*) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or

(*d*) when the trust, being revocable, is expressly revoked.

**78.** A trust created by will may be revoked at the pleasure of the testator. Revocation of trust.

A trust otherwise created can be revoked only—

(*a*) where all the beneficiaries are competent to contract—by their consent;

(*b*) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or

(*c*) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

*Illustration.*

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

**79.** No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust. Revocation not to defeat what trustees have duly done.

## CHAPTER IX.

### Of certain Obligations in the Nature of Trusts.

**80.** An obligation in the nature of a trust is created in the following cases. Where obligation in nature of trust is created.

**81.** Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative. Where it does not appear that transferor intended to dispose of beneficial interest.

*Illustrations.*

(*a*) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(*b*) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(*c*) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(*d*) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

Transfer to one for consideration paid by another.

**82.** Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Nothing in this section shall be deemed to affect the Code of Civil Procedure, section 317,[a] or Act No. XI of 1859 (*to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), section 36. XIV of 1882. XI of 1859.

Trust incapable of execution or executed without exhausting trust-property.

**83.** Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

*Illustrations.*

(*a*) A conveys certain land to B—

"upon trust," and no trust is declared; or

"upon trust to be thereafter declared," and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

"in trust for C," and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(*b*) A transfers Rs. 10,000 in the four per cents. to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

[a] See Act XIV of 1882, section 3.

(*c*) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(*d*) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

**Transfer for illegal purpose.**

**84.** Where the owner of property transfers it to another for an illegal purpose, and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

**Bequest for illegal purpose.**

**85.** Where a testator bequeaths certain property upon trust, and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

**Bequest of which revocation is prevented by coercion.**

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

**Transfer pursuant to rescindable contract.**

**86.** Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

**Debtor becoming creditor's representative.**

**87.** Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

**Advantage gained by fiduciary.**

**88.** Where a trustee, executor, partner, agent, director of a company, legal adviser or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

*Illustrations.*

(*a*) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(*b*) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(*c*) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(*d*) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(*e*) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lákh of rupees. A holds the lákh for the benefit of the partnership.

(*f*) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(*g*) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(*h*) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

Advantage gained by exercise of undue influence.

**89.** Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage gained by qualified owner.

**90.** Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

*Illustrations.*

(*a*) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(*b*) A village belongs to a Hindú family. A, one of its members, pays nazrána to Government and thereby procures his name to be entered as the inámdár of the village. A holds the village for the benefit of himself and the other members.

(*c*) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

Property acquired with notice of existing contract.

**91.** Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

**92.** Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Advantage secretly gained by one of several compounding creditors.

**93.** Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive trusts in cases not expressly provided for.

**94.** In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

*Illustrations.*

(*a*) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(*b*) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain moneys. B may compel him to account for such moneys.

(*c*) A makes a gift of a lákh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

Obligor's duties, liabilities and disabilities.

**95.** The person holding property in accordance with any of the preceding sections of this chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (*a*) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (*b*) where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

Saving of rights of *bonâ fide* purchasers.

**96.** Nothing contained in this chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

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## THE SCHEDULE.

### STATUTE.

| Year and chapter. | Short title. | Extent of repeal. |
|---|---|---|
| 29 Car. II, c. 3 ... | The Statute of Frauds... | Sections 7, 8, 9, 10 and 11. |

### ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

| Number and year. | Short title. | Extent of repeal. |
|---|---|---|
| XXVIII of 1866 ... | The Trustees' and Mortgagees' Powers Act, 1866. | Sections 2, 3, 4, 5, 32, 33, 34, 35, 36 and 37.<br>In sections 39 and 43, the word "trustee" wherever it occurs; and in section 43 the words "management or" and "the trust-property or". |
| I of 1877 .. ... | The Specific Relief Act, 1877. | In section 12, the first illustration. |

## ACT No. III OF 1882.

*Received the Governor General's assent on the 19th January, 1882.*

### An Act to amend the law relating to Seditious Publications.

WHEREAS it is expedient to amend the law relating to Seditious Publications; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Seditious Publications Act, 1882." Short title.

It extends to the whole of British India; and shall come into force at once. Local extent. Commencement.

IX of 1878. XVI of 1878. 2. Act No. IX of 1878 (*An Act for the better control of Publications in Oriental languages*) and Act No. XVI of 1878 (*An Act to Amend Act No. IX of 1878*) are repealed. Repeal of Acts.

XIV of 1866. 3. After section 60 of Act No. XIV of 1866 (*The Indian Post Office Act, 1866*) the following section shall be inserted, namely:— Section inserted after section 60, Act No. XIV of 1866.

"60A. Whenever any notification has been published under section 19 of VIII of 1878. the Sea Customs Act, 1878, in respect of any newspaper, book, pamphlet, placard, broadsheet or other document, any officer of the Postal Department empowered in this behalf by the Governor General in Council, by name or in virtue of his office, may search or cause search to be made for any copies of the same in the custody of that department, and shall deliver all such copies found to such officer as the Governor General in Council may appoint in this behalf by name or in virtue of his office, and such copies may be disposed of in such manner as the Governor General in Council may from time to time direct."

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## THE TRANSFER OF PROPERTY ACT, 1882.

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## ACT No. IV of 1882.

*Received the Governor General's assent on the 17th February, 1882.*

# An Act to amend the law relating to the Transfer of Property by act of Parties.

Preamble.

Whereas it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

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## CHAPTER I.

### Preliminary.

Short title.

1. This Act may be called "The Transfer of Property Act, 1882":

Commencement.

It shall come into force on the first day of July, 1882;

Extent.

It extends in the first instance to the whole of British India except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor of the Panjáb and the Chief Commissioner of British Burma.

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

And any Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local official Gazette, exempt, either retrospectively or prospectively, throughout the whole or any part of the territories administered by such Local Government, the members of any race, sect, tribe or class from all or any of the following provisions, namely, sections 41, 54, paragraphs two and three, 59, 69, 107 and 123.

Repeal of Acts.

Saving of certain enactments, incidents, rights, liabilities, &c.

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

(*a*) the provisions of any enactment not hereby expressly repealed:

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:

(*c*) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: or

(*d*) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction:

and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindu, Muhammadan or Buddhist law.

Interpretation-clause.

"immoveable property":

"instrument":

"registered":

"attached to the earth":

3. In this Act, unless there is something repugnant in the subject or context,—

"immoveable property" does not include standing timber, growing crops or grass:

"instrument" means a non-testamentary instrument:

"registered" means registered in British India under the law[a] for the time being in force regulating the registration of documents: III of 1877.

"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

and a person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which "notice":

[a] See Act III of 1877.

he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229.

IX of 1872.

**4.** The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872.

IX of 1872.

Enactments relating to contracts to be taken as part of Contract Act.

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## CHAPTER II.

### Of Transfers of Property by act of Parties.[a]

### (*A*).—*Transfer of Property, whether moveable or immoveable.*

**5.** In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act.

"Transfer of property" defined.

**6.** Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force:

What may be transferred.

(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(*b*) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(*e*) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(*f*) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(*g*) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(*h*) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

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[a] Nothing in this chapter is to be deemed to affect any rule of Hindu, Muhammadan or Buddhist law—see section 2, *supra*.

Persons competent to transfer.

**7.** Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

Operation of transfer.

**8.** Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Oral transfer.

**9.** A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Condition restraining alienation.

**10.** Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Restriction repugnant to interest created.

**11.** Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for

the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

**12.** Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Condition making interest determinable on insolvency or attempted alienation.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

**13.** Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Transfer for benefit of unborn person.

*Illustration.*

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

**14.** No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Rule against perpetuity.

**15.** If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails as regards the whole class.

Transfer to class some of whom come under sections 13 and 14.

**16.** Where an interest fails by reason of any of the rules contained in sections 13, 14 and 15, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior transfer.

**17.** The restrictions in sections 14, 15 and 16 shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

Transfer in perpetuity for benefit of public.

**18.** Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed.

Direction for accumulation.

EXCEPTION.—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

Vested interest.

**19.** Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

EXPLANATION.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

When unborn person acquires vested interest on transfer for his benefit.

**20.** Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Contingent interest.

**21.** Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

EXCEPTION.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transfer or also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

Transfer to members of a class who attain a particular age.

**22.** Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

**23.** Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer contingent on happening of specified uncertain event.

**24.** Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Transfer to such of certain persons as survive at some period not specified.

*Illustration.*

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

**25.** An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Conditional transfer.

*Illustrations.*

(*a*) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b*) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(*c*) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(*d*) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

**26.** Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Fulfilment of condition precedent.

*Illustrations.*

(*a*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(*b*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

**27.** Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

*Illustrations.*

(*a*) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's lifetime. The disposition in favour of C takes effect.

(*b*) A transfers property to his wife; but in case she should die in his lifetime, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

Ulterior transfer con[illegible]n [illegible]g or [illegible]en[illegible]ecifi[illegible]t.

**28.** On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

Fulfilment of condition subsequent.

**29.** An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

*Illustration.*

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

**30.** If the ulterior disposition is not valid, the prior disposition is not affected by it.

*Illustration.*

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

**31.** Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

*Illustrations.*

(*a*) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(*b*) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

**32.** In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

**33.** Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

**34.** Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Transfer conditional on performance of act, time being specified.

*Election.*

Election when necessary.

**35.** Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

*Illustrations.*

The farm of Sultánpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

EXCEPTION TO THE LAST PRECEDING FOUR RULES.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

*Illustration.*

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

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*Apportionment.*

**36.** In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of periodical payments on determination of interest of person entitled.

**37.** When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Apportionment of benefit of obligation on severance.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

*Illustrations.*

(*a*) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. $7\frac{1}{2}$ to C, and Rs. $7\frac{1}{2}$ to D, and must deliver the sheep according to the joint direction of B, C and D.

(*b*) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

## *B.—Transfer of Immoveable Property.*

Transfer by [illegible]sed [illegible]nder [illegible] cir[illegible]nces [illegible]sfer.

**38.** Where any person, authorized only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

*Illustration.*

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer where third person is

**39.** Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property,

and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

entitled to maintenance.

*Illustration.*

A, a Hindu, transfers Sultánpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultánpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

**40.** Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

Burden of obligation imposing restriction on use of land,

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

or of obligation annexed to ownership but not amounting to interest or easement.

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

*Illustration.*

A contracts to sell Sultánpur to B. While the contract is still in force he sells Sultánpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

**41.**[a] Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by ostensible owner.

**42.** Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee

Transfer by person having authority to revoke

[a] For power to exempt persons from the operation of this section, see section 1, *supra*.

former transfer.

(subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

*Illustration.*

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

**43.** Where a person erroneously represents that he is authorized to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

*Illustration.*

A, a Hindu who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

[illegible] by [illegible]wner.

**44.** Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

Joint transfer for consideration.

**45.** Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund;

and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Transfer for consideration by persons having distinct interests.

**46.** Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

*Illustrations.*

(*a*) A, owning a moiety, and B and C, each a quarter share, of mauza Sultánpur, exchange an eighth share of that mauza for a quarter share of manza Lálpura. There being no agreement to the contrary, A is entitled to an eighth share in Lálpura, and B and C each to a sixteenth share in that mauza.

(*b.*) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

Transfer by co-owners of share in common property.

**47.** Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

*Illustration.*

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultánpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

Priority of rights created by transfer.

**48.** Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Tranferee's right under policy.

**49.** Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Rent *bonâ fide* paid to holder under defective title.

**50.** No person shall be chargeable with any rents or profits of any immoveable property which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

*Illustration.*

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

Improvements made by *bonâ fide* holders under defective titles.

**51.** When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

[illegible] of property pending suit relating thereto.

**52.** During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

**53.** Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed. Fraudulent transfer.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

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## CHAPTER III.

### Of Sales of Immoveable Property.

**54.**[a] "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised. "Sale" defined.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. Sale how made.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. Contract for sale.

It does not, of itself, create any interest in or charge on such property.

**55.** In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold :— Rights and liabilities of buyer and seller.

(1) The seller is bound—

(*a*) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

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[a] For power to exempt persons from the operation of paragraphs two and three of this section, see section 1, *supra*.

(*b*) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(*c*) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(*d*) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(*e*) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents;

(*f*) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(*g*) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that (*a*), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (*b*), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (*a*) the seller, and

in case (*b*) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(*a*) to the rents and profits of the property till the ownership thereof passes to the buyer;

(*b*) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

(*a*) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(*b*) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(*c*) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(*d*) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(*a*) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(*b*) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (*a*), and paragraph (5), clause (*a*), is fraudulent.

Sale of one of two properties subject to a common charge.

**56.** Where two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

*Discharge of Incumbrances on Sale.*

Provision by Court for incumbrances, and sale freed therefrom.

**57.** (*a*) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(*b*) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving

effect to the sale, and give directions for the retention and investment of the money in court.

(*c*) After notice served on the persons interested in or entitled to the money or fund in court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(*d*) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(*e*) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

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## CHAPTER IV.

### Of Mortgages of Immoveable Property and Charges.

"Mortgage," "mortgagor," "mortgagee," "mortgage-money" and "mortgage-deed" defined.

**58.** (*a*) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

Simple mortgage.

(*b*) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Mortgage by conditional sale.

(*c*) Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale

Usufructuary mortgage.

(*d*) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

English mortgage.

(*e*) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Mortgage when to be by assurance.

**59.**[a] Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karáchí and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

*Rights and Liabilities of Mortgagor.*

**60.** At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (*a*) to deliver the mortgage-deed, if any, to the mortgagor, (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged property to him

[a] For power to exempt persons from the operation of this section, see section 1, *supra*.

or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor. Redemption of portion of mortgaged property.

**61.** A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property other than that comprised in the mortgage which he seeks to redeem. Right to redeem one of two properties separately mortgaged.

*Illustration.*

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

**62.** In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property— Right of usufructuary mortgagor to recover possession.

(*a*) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(*b*) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any) prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in court as hereinafter provided.

Accession to mortgaged property.

**63.** Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession acquired in virtue of transferred ownership.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee, the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In the case last mentioned, the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

**64.** Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

**65.** In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,—

(*a*) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(*b*) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(*d*) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein and the contracts binding on the lessee have been paid, performed

and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

(*e*) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (*c*), or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

Waste by mortgagor in possession.

**66.** A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

EXPLANATION.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

### *Rights and Liabilities of Mortgagee.*

Right to foreclosure or sale.

**67.** In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

(*a*) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

(*b*) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(*c*) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(*d*) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Right to sue for mortgage-money.

**68.** The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only :—

(*a*) where the mortgagor binds himself to repay the same:

(*b*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor:

(*c*) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or the security is rendered insufficient as defined in section 66, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

Power of sale when valid.

**69.*** A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases (namely) :—

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist;

* For power to exempt persons from the operation of this section, see section 1, *supra*.

(*b*) where the mortgagee is the Secretary of State for India in Council;

(*c*) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized, or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurrred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections 6 to 19 (both inclusive) of the Trustees' and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist.

XXVIII of 1866.

**Accession to mortgaged property.**

**70.** If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

*Illustrations.*

(*a*) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(*b*) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

Renewal of mortgaged lease.

**71.** When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

Rights of mortgagee in possession.

**72.** When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

(*a*) for the due management of the property and the collection of the rents and profits thereof;

(*b*) for its preservation from destruction, forfeiture or sale;

(*c*) for supporting the mortgagor's title to the property;

(*d*) for making his own title thereto good against the mortgagor; and

(*e*) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and where no such rate is fixed, at the rate of nine per cent. per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

Charge on proceeds of revenue-sale.

**73.** Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the

surplus, if any, of the proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

Right of subsequent mortgagee to pay off prior mortgagee.

**74.** Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law[a] for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

III of 1877.

Rights of mesne mortgagee against prior and subsequent mortgagees.

**75.** Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Liabilities of mortgagee in possession.

**76.** When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(*b*) he must use his best endeavours to collect the rents and profits thereof;

(*c*) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;

(*d*) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (*c*) and the interest on the principal money;

(*e*) he must not commit any act which is destructive or permanently injurious to the property;

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so

[a] See Act III of 1877.

much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(*g*) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (*c*) and (*d*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money: the surplus, if any, shall be paid to the mortgagor;

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be.

Loss occasioned by his default.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure.

Receipts in lieu of interest.

**77.** Nothing in section 76, clauses (*b*), (*d*), (*g*) and (*h*), applies to cases where there is a contract between the mortgagee and the mortagagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

*Priority.*

Postponement of prior mortgagee.

**78.** Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

**79.** If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage. Mortgage to secure uncertain amount when maximum is expressed.

*Illustration.*

A mortgages Sultánpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultánpur to C, to secure Rs. 10,000, ( having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

**80.** No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance. Tacking abolished.

*Marshalling and Contribution.*

**81.** If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property. Marshalling securities.

**82.** Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage. Contribution to mortgage-debt.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the second mortgagee.

*Deposit in Court.*

Power to deposit in court money due on mortgage.

**83.** At any time after the principal money has become payable and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints[a]) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Cessation of interest.

**84.** When the mortgagor or such other person as aforesaid has tendered or deposited in court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, as the case may be.

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

*Suits for Foreclosure, Sale or Redemption.*

Parties to

**85.** Subject to the provisions of the Code of Civil Procedure, section 437[b], XIV of 1882.

[a] See Act XIV of 1882, sections 51 and 52.
[b] See Act XIV of 1882, section 3.

all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: Provided that the plaintiff has notice of such interest.

Suits for foreclosure, sale and redemption.

*Foreclosure and Sale.*

**86.** In a suit for foreclosure, if the plaintiff succeeds, the Court shall make a decree, ordering that an account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

Decree in foreclosure-suit.

and ordering that, upon the defendant paying to the plaintiff or into court the amount so due, on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

**87.** If payment is made of such amount and of such subsequent costs as are mentioned in section 94, the defendant shall (if necessary) be put into possession of the mortgaged property.

Procedure in case of payment of amount due.

If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall then pass such order, and may, if necessary, deliver possession of the property to the plaintiff:

Order absolute for foreclosure.

Provided that the Court may, upon good cause shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.

Power to enlarge time.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

XIV of 1882. In the Code of Civil Procedure, Schedule IV, No. 129,[a] for the words "Final decree," the words "Decree absolute" shall be substituted.

[a] See Act XIV of 1882, section 3.

Decree for sale.

**88.** In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section 86, and also ordering that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into court and applied in payment of what is so found due to the plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Power to decree sale in foreclosure-suit.

In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff, or of any person interested either in the mortgage-money or in the right of redemption, if it thinks fit, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.

Procedure when defendant pays amount due.

**89.** If in any case under section 88 the defendant pays to the plaintiff or into court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section 94, the defendant shall (if necessary) be put in possession of the mortgaged property; but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section 88; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Order absolute for sale.

Recovery of balance due on mortgage.

**90.** When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on the mortgage, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such sum.

### *Redemption.*

Who may sue for redemption.

**91.** Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:—

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in, or charge upon, the property;

(*b*) any person having any interest in, or charge upon, the right to redeem the property;

(*c*) any surety for the payment of the mortgage-debt or any part thereof;

(*d*) the guardian of the property of a minor mortgagor on behalf of such minor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(*f*) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;

(*g*) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

Decree in redemption-suit.

**92.** In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree ordering—

that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree;

that, upon the plaintiff paying to the defendant or into court the amount so due on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall re-transfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property; and

that if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

In case of redemption, possession.

**93.** If payment is made of such amount and of such subsequent costs as are mentioned in section 94, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

In default, foreclosure or sale.

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

If he applies for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he applies for the latter order, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into court and applied in payment of what is found due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall, as regards the property affected by the order, both be extinguished:

Power to enlarge time.

Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postpone the day fixed under section 92 for payment to the defendant.

Costs of mortgagee subsequent to decree.

**94.** In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment.

Charge of one of several co-mortgagors who redeems.

**95.** Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession.

*Sale of Property subject to prior Mortgage.*

Sale of property subject to prior mortgage.

**96.** If any property the sale of which is directed under this chapter is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Application of proceeds.

**97.** Such proceeds shall be brought into court and applied as follows:—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or, if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Nothing in this section or in section 96 shall be deemed to affect the powers conferred by section 57.

### *Anomalous Mortgages.*

Mortgage not described in section 58, clauses (*b*), (*c*), (*d*) and (*e*).

**98.** In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

### *Attachment of Mortgaged Property.*

Attachment of mortgaged property.

**99.** Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section 67, and he may institute such suit notwithstanding anything contained in the Code of Civil Procedure, section 43.[a]

XIV of 1882.

### *Charges.*

Charges.

**100.** Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 and all the provisions hereinbefore contained as to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

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[a] See Act XIV of 1882, section 3.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

Extinguishment of charges.

**101.** Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit.

*Notice and Tender.*

Service or tender on or to agent.

**102.** Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

Notice, &c., to or by person incompetent to contract.

**103.** Where, under the provisions of this chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXXI of the Code of Civil Procedure[a] XIV of 1882.

[a] See Act XIV of 1882, section 3.

shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

**104.** The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this chapter. Power to make rules.

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## CHAPTER V.

### Of Leases of Immoveable Property.

**105.** A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. "Lease" defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent. "Lessor," "lessee," "premium" and "rent" defined.

**106.** In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy. Duration of certain leases in absence of written contract or local usage.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

**107.**[a] A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument. Leases how made

All other leases of immoveable property may be made either by an instrument or by oral agreement.

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[a] For power to exempt persons from the operation of this section, see section 1, *supra*.

Rights and liabilities of lessor and lessee.

**108.** In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased :—

*A.—Rights and Liabilities of the Lessor.*

(*a*) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover :

(*b*) the lessor is bound on the lessee's request to put him in possession of the property :

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

*B.—Rights and Liabilities of the Lessee.*

(*d*) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease :

(*e*) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

(*f*) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :

(*g*) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the

property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:

(*h*) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth: provided he leaves the property in the state in which he received it:

(*i*) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:

(*j*) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee:

(*k*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:

(*l*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(*m*) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(*n*) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(*p*) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes:

(*q*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

Rights of lessor's transferee.

**109.** If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

Exclusion of day on which term commences.

**110.** Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Determination of lease.

**111.** A lease of immoveable property determines—

(*a*) by efflux of the time limited thereby:

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event:

(*c*) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:

(*d*) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(*e*) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*f*) by implied surrender:

(*g*) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease:

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

*Illustration to clause* (*f*).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

Waiver of forfeiture.

**112.** A forfeiture under section 111, clause (*g*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

Waiver of notice to quit.

**113.** A notice given under section 111, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

*Illustrations.*

(*a*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

Relief against forfeiture for non-payment of rent.

**114.** Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Effect of surrender and forfeiture on under-leases.

**115.** The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

Effect of holding over.

**116.** If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

*Illustrations.*

(*a*) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(*b*) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

**117.** None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor General in Council, may by notification published in the local official Gazette declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force. Exemption of leases for agricultural purposes.

Such notification shall not take effect until the expiry of six months from the date of its publication.

## CHAPTER VI.

### Of Exchanges.

**118.** When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange." "Exchange" defined.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

**119.** In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him. Right of party deprived of thing received in exchange.

**120.** Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes. Rights and liabilities of parties.

**121.** On an exchange of money, each party thereby warrants the genuineness of the money given by him. Exchange of money.

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## CHAPTER VII.

### Of Gifts.

**122.** "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. "Gift" defined.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. Acceptance when to be made.

If the donee dies before acceptance, the gift is void.

Transfer how effected.

**123.**[a] For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Gift of existing and future property.

**124.** A gift comprising both existing and future property is void as to the latter.

Gift to several, of whom one does not accept.

**125.** A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

When gift may be suspended or revoked.

**126.** The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

*Illustrations.*

(*a*) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(*b*) A gives a lákh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lákh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

Onerous gifts.

**127.** Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept

[a] For power to exempt persons from the operation of this section, see section 1, *supra*.

one of them and refuse the others, although the former may be beneficial and the latter onerous.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound. Onerous gift to disqualified person.

*Illustrations.*

(*a*) A has shares in X, a prosperous joint-stock company, and also shares in Y, a joint-stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint-stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(*b*) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

**128.** Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein. Universal donee.

**129.** Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section 123, any rule of Hindu or Buddhist law. Saving of donations *mortis causâ* and Muhammadan law.

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## CHAPTER VIII.

### Of Transfers of Actionable Claims.

**130.** A claim which the Civil Courts recognise as affording grounds for relief is actionable whether a suit for its enforcement is or is not actually pending or likely to become necessary. "Actionable claim" defined.

**131.** No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party to or otherwise aware of such transfer; and every dealing by such debtor or person, not being a party to or otherwise aware of, and not having received express notice of, a transfer, with the debt or property shall be valid as against such transfer. Transfer of debts.

*Illustration.*

A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

Notice to be in writing signed.

**132.** Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorised in this behalf.

Debtor to give effect to transfer.

**133.** On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer is made is not complete according to the law of such country.

Warranty of solvency of debtor.

**134.** Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Discharge of person against whom claim is sold.

**135.** Where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Nothing in the former part of this section applies—

(*a*) where the sale is made to the co-heir to, or co-proprietor of, the claim sold;

(*b*) where it is made to a creditor in payment of what is due to him;

(*c*) where it is made to the possessor of a property subject to the actionable claim;

(*d*) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment.

Incapacity of officers connected with Courts of justice.

**136.** No judge, pleader, mukhtár, clerk, bailiff or other officer connected with Courts of justice can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

Liability of transferee of debt.

**137.** The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which the transferor was subject in respect thereof at the date of the transfer.

*Illustration.*

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

**138.** When a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor. Mortgaged debt.

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## THE SCHEDULE.

### (*a*) Statutes.

| Year and chapter. | Subject. | Extent of repeal. |
|---|---|---|
| 27 Hen. VIII, c. 10 ... | Uses ... ... ... | The whole. |
| 13 Eliz., c. 5 ... ... | Fraudulent conveyances ... | The whole. |
| 27 Eliz., c. 4 ... | Fraudulent conveyances ... | The whole. |
| 4 Wm. & Mary, c. 16 ... | Clandestine mortgages ... ... | The whole. |

### (*b*) Acts of the Governor General in Council.

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| IX of 1842 ... ... | Lease and release ... ... | The whole. |
| XXXI of 1854 ... | Modes of conveying land ... | Section 17. |
| XI of 1855 ... ... | Mesne profits and improvements ... | Section 1; in the title, the words "to mesne profits and" and in the preamble "to limit the liability for mesne profits and". |
| XXVII of 1866 ... | Indian Trustee Act ... ... | Section 31. |
| IV of 1872 ... ... | Panjáb Laws Act ... ... | So far as it relates to Bengal Regulations I of 1798 and XVII of 1806. |
| XX of 1875 ... ... | Central Provinces Laws Act ... | So far as it relates to Bengal Regulations I of 1798 and XVII of 1806. |

(*b*) ACTS OF THE GOVERNOR GENERAL IN COUNCIL—*contd.*

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| XVIII of 1876 ... | Oudh Laws Act ... ... | So far as it relates to Bengal Regulation XVII of 1806. |
| I of 1877 ... ... | Specific Relief ... ... | In sections 35 and 36, the words "in writing." |

(*c*) REGULATIONS.

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| Bengal Regulation I of 1798. | Conditional sales ... ... | The whole Regulation. |
| Bengal Regulation XVII of 1806. | Redemption ... ... | The whole Regulation. |
| Bombay Regulation V of 1827. | Acknowledgment of debts: Interest: Mortgagees in possession. | Section 15. |

# THE INDIAN COMPANIES ACT, 1882.

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## ACT No. VI OF 1882.

*Received the Governor General's assent on the 24th February, 1882.*

### An Act for the incorporation, regulation and winding-up of Trading Companies and other Associations.[a]

WHEREAS it is expedient to amend the law relating to the incorporation, regulation and winding-up of Trading Companies and other Associations; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

1. This Act may be cited as "The Indian Companies Act, 1882": Short title.

[a] This Act is to a great extent a re-enactment of Act X of 1866, which was transcribed chiefly from 25 & 26 Vic., cap. 89.

Local extent.

it extends to the whole of British India:

Commencement.

it shall come into force on the first day of May, 1882; and the time at which it comes into force is hereinafter referred to as the commencement of this Act.

Repeal of Act X of 1866.

2. On and from the commencement of this Act, the Indian Companies Act, 1866, shall be repealed. But such repeal shall not affect— X of 1866.

(*a*) the incorporation of any Company registered under the said Act or any Act thereby repealed;

(*b*) any right or privilege acquired, or liability incurred, under the said Act or any Act thereby repealed;

(*c*) Table B [a] in the schedule annexed to Act No. XIX of 1857 [b] or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this Act. XIX of 1857.

And all references to the said Indian Companies Act, 1866, in Acts or Regulations passed before the commencement of this Act shall be read as if made to this Act; and all rules made, fees directed, resolutions passed and other things duly done under the same Act shall be deemed to be respectively made, directed, passed and done under this Act; and all Companies under the same Act shall be deemed to be Companies under this Act. X of 1866.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Insurance Company";

"Insurance Company" means a Company that carries on the business of insurance either solely or in common with any other business or businesses;

"Court";

"Court" means the principal Civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction;

"District Court".

"District Court" means the principal Civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction.

Prohibition of partnerships exceeding certain number.

4. No Company, Association or Partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a Company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council, or by Royal Charter or Letters Patent; and no Company, Association or Partnership consisting of more than twenty persons shall be formed for

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[a] This Table is set out on pages 202 to 212.

[b] Repealed by Act X of 1866, section 219 and Schedule III.

the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, Association or Partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act or of Letters Patent.

Division of Act.

5. This Act is divided into nine Parts, relating to the following subject-matters :—

The first Part—to the constitution and incorporation of Companies and Associations under this Act;

The second Part—to the distribution of the capital and liability of members of Companies and Associations under this Act;

The third Part—to the management and administration of Companies and Associations under this Act;

The fourth Part—to the winding-up of Companies and Associations under this Act;

The fifth Part—to the registration-office;

The sixth Part—to the application of this Act to Companies registered under Act No. XIX of 1857[a] (*for the incorporation and regulation of Joint-Stock Companies and other Associations, either with or without limited liability of the members thereof*), and Act No. VII of 1860[b] (*to enable Joint-Stock Banking Companies to be formed on the principle of limited liability*), or either of them;

XIX of 1857.

VII of 1860.

The seventh Part—to Companies authorized to register under this Act;

The eighth Part—to the application of this Act to unregistered Companies;

The ninth Part—to miscellaneous provisions.

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# PART I.

## Constitution and Incorporation of Companies and Associations under this Act.

### *Memorandum of Association.*

Mode of

6. Any seven or more persons associated for any lawful purpose may, by

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[a] Repealed by Act X of 1866, section 219 and Schedule III. Table B, however, remains in force,—see section 2, clause (*c*), *supra*.

[b] Repealed by Act X of 1866, section 219 and Schedule III.

forming Company.

subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, with or without limited liability.

EXPLANATION.—Foreigners are persons within the meaning of this section, although the whole or any part of the business of the proposed Company is intended to be transacted out of British India.

Mode of limiting liability of members.

7. The liability of the members of a Company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up.

Directors with unlimited liability.

* Where a Company is formed as a Limited Company, the liability of the directors or managers of such Company, or of the managing director, may, if so provided by the memorandum of association, be unlimited.

Memorandum of association of a Company limited by shares.

8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association shall contain the following things (that is to say) :—

(*a*) the name of the proposed Company with the addition of the word "limited" as the last word in such name;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate;

(*c*) the objects for which the proposed Company is to be established;

(*d*) a declaration that the liability of the members is limited;

(*e*) the amount of capital with which the Company proposes to be registered, divided into shares of a certain fixed amount:

Subject to the following regulations :—

(*f*) that no subscriber shall take less than one share;

(*g*) that each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of a Company limited by guarantee.

9. Where a Company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound up (hereinafter referred to as a Company limited by guarantee), the

* Compare 30 & 31 Vic, cap. 131, section 4.

memorandum of association shall contain the following things (that is to say) :—

(*a*) the name of the proposed Company, with the addition of the word "limited" as the last word in such name;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate;

(*c*) the objects for which the proposed Company is to be established;

(*d*) a declaration that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Memorandum of association of an unlimited Company.

**10.** Where a Company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited Company), the memorandum of association shall contain the following things (that is to say) :—

(*a*) the name of the proposed Company;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate;

(*c*) the objects for which the proposed Company is to be established.

Signature and effect of memorandum of association.

**11.** The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a contract to observe all the conditions of such memorandum subject to the provisions of this Act.

Power of certain Companies to alter memorandum of association.

**12.** Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid up shares into stock; but, save as aforesaid, and save as hereinafter provided, no

alteration shall be made by any Company in the conditions contained in its memorandum of association.

*Reduction of Capital and Shares.*[a]

Power to Company to reduce capital.

**13.** Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any Company shall come into operation until an order of the Court is registered by the Registrar of Joint-Stock Companies, as is hereinafter mentioned.

[b] EXPLANATION I.—The word "capital" includes paid up capital.

[c] EXPLANATION II.—The power to reduce capital conferred by this section includes a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the Company; and paid up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the Company; and, to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, notwithstanding anything hereinafter contained.

Company to add "and reduced" to its name for a limited period.

**14.** The Company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the Company.

Company to apply to the Court for an order confirming reduction.

**15.** A Company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition, the Court, if satisfied that, with respect to every creditor of the Company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

[d] When the reduction does not involve either the diminution of any liability

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[a] Compare 30 & 31 Vic., cap. 131, sections 9 to 19.

[b], [c] Compare 40 & 41 Vic., cap. 26, section 3.

[d] Compare 40 & 41 Vic., cap. 26, section 4.

in respect of unpaid capital or the payment to any shareholder of any paid up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction; and it shall not be necessary, before the presentation of any petition under this section, to add, and the Court may, if it thinks fit so to do, dispense with the addition of, the words "and reduced," as mentioned in section 14.

[a] In any case that the Court thinks fit so to do, it may require the Company to publish, in such manner as the Court thinks fit, the reasons for the reduction or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in relation to such reduction, and, if the Court thinks fit, the cause which led thereto.

**Creditors may object to reduction, and list of objecting creditors to be settled by Court.**

**16.** Where a Company proposes to reduce capital, every creditor of the Company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the Company, would be admissible in proof against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the Company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction:

[b] Provided that, when the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction.

**Court may dispense with consent of creditor on security being given for his debt.**

**17.** Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it thinks fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned (that is to say):—

(*a*) If the full amount of the debt or claim of the creditor is admitted by

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[a], [b] Compare 40 & 41 Vic., cap. 26, section 4.

the Company, or, though not admitted, is such as the Company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(*b*) If the full amount of the debt or claim of the creditor is not admitted by the Company, and is not such as the Company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the Company may be liable in respect thereof, in the same manner as if the Company were being wound up by the Court; and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Order and minute to be registered.

**18.** The Registrar of Joint-Stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a Company and the delivery to him of a copy of the order and of a minute (approved by the Court), showing, with respect to the capital of the Company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share,[a] shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the Court may direct.

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act, with respect to the reduction of capital, have been complied with, and that the capital of the Company is such as is stated in the minute.

Minute to form part of memorandum of association.

**19.** The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the Company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the Company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

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[a] Compare 40 & 41 Vic., cap. 26, section 4.

**20.** If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a Company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of this Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the Company at the date of the registration of the order and minute relating to the reduction of its capital shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound up on the day prior to such registration; Saving of rights of creditors who are ignorant of proceedings.

and, on the Company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up.

Nothing in this section shall affect the rights of the contributories of the Company among themselves.

**21.** A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and, if any Company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding ten rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty. Registered minute to be embodied in memorandum of association.

**22.** If any director, manager or officer of the Company wilfully conceals the name of any creditor of the Company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the Company, or if any director or manager of the Company abets, within the meaning of the Indian Penal Code, any such concealment or misrepresentation as aforesaid, every such director, manager or officer shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both. Penalty on concealment of name of creditor.

XLV of 1860.

**23.** [a] Any Company limited by shares may so far modify the conditions Power to re-

[a] Compare 40 & 41 Vic., cap. 26, section 5.

duce capital by cancellation of unissued shares.

contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of passing such resolution, have not been taken or agreed to be taken by any persons; and the provisions as to reduction of capital contained in the other sections of this Act shall not apply to any reduction made in pursuance of this section.

*Sub-division of Shares.*[a]

Shares may be divided into shares of smaller amount.

24. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as, by sub-division of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association:

Provided that, in the sub-division of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

25. The statement of the number and amount of the shares into which the capital of the Company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly or wilfully authorizes or permits such default shall incur the like penalty.

*Associations not for Profit.*[b]

Special provisions as to associations formed for purposes not of gain.

26. Where any association which might be formed under this Act as a limited Company proves to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its Secretaries, direct such associa-

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[a] Compare 30 & 31 Vic., cap. 131, sections 21 & 22.

[b] " " " " section 23.

tion to be registered with limited liability, without the addition of the word "limited" to its name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited Companies; with the exceptions that none of the provisions of this Act that require a limited Company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar, shall apply to an association so registered.

The license by the Local Government may be granted upon such conditions and subject to such regulations as the Local Government thinks fit to impose; and such conditions and regulations shall be binding on the association, and may at the option of the Local Government be inserted in the memorandum and articles of association, or in both or one of such documents.

*Calls upon Shares.*[a]

Company may have some shares fully paid, and others not.

27. Nothing herein contained shall be deemed to prevent any Company under this Act, if authorized by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things, namely :—

(*a*) making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls;

(*b*) accepting from any member of the Company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made;

(*c*) paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in which shares are to be issued and held.

28. Every share in any Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar of Joint-Stock Companies at or before the issue of such shares.

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[a] Compare 30 & 31 Vic., cap. 131, sections 24 & 25.

*Transfer of Shares.*[a]

Transfer may be registered at request of transferor.

**29.** A Company shall, on the application of the transferor of any share or interest in the Company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

*Share-warrants to Bearer.*[b]

Warrant of limited shares fully paid up may be issued in name of bearer.

**30.** In the case of a Company limited by shares, the Company, if authorized so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant (hereinafter referred to as a share-warrant) stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on such shares or stock.

Coupons.

Effect of share-warrant.

**31.** A share-warrant shall entitle the bearer thereof to the shares or stock specified therein; and such shares or stock may be transferred by the delivery of the share-warrant.

Re-registration of bearer of a share-warrant in the register.

**32.** The bearer of a share-warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register of members the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

Regulations of the Company may make the bearer of a share-warrant a member.

**33.** The bearer of a share-warrant may, if the regulations of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share-warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

Entries in

**34.** On the issue of a share-warrant in respect of any share or stock, the

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[a] Compare 30 & 31 Vic., cap. 131, section 26.
[b] " " " " sections 27 to 31 & 33.

Company shall strike out of its register of members the name of the member then entered therein as holding such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars:— register where share-warrant issued.

(*a*) the fact of the issue of the warrant;

(*b*) a statement of the shares or stock included in the warrant, distinguishing each share by its number;

(*c*) the date of the issue of the warrant.

**35.** There shall be charged on every share-warrant a stamp-duty of an amount equal to three times the amount of the *ad valorem* stamp-duty which would be chargeable on an instrument transferring the shares or stock specified in the warrant if the consideration for the transfer were the nominal value of such shares or stock. Stamps on share-warrants.

[a] If a share-warrant is issued without being duly stamped, the Company issuing the same, and also every person who at the time when it is issued is the managing director or secretary or other principal officer of the Company, shall forfeit the sum of five hundred rupees. Penalty for issuing share-warrant not duly stamped.

### *Change of Name.*

**36.** Any Company under this Act, with the sanction of a special resolution of the Company passed in manner hereinafter mentioned, and with the approval of the Local Government testified in writing under the hand of one of the Secretaries to such Government, may change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company; and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name. Power of Companies to change name.

EXPLANATION.—The issue of the certificate of incorporation is necessary to complete the change of name.

### *Articles of Association.*

**37.** The memorandum of association may, in the case of a Company limited by shares, and shall, in the case of a Company limited by guarantee or un- Regulations to be prescribed by

[a] Compare 33 & 34 Vic., cap. 97, section 127.

articles of association.

limited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient.

The articles shall be expressed in separate paragraphs, numbered consecutively. They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto. They shall, in the case of a Company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered, and in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Application of table A.

38. In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association, or, in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company, in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

Signature and effect of articles of association.

39. The articles of association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto and as if such articles contained a contract on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to the provisions of this Act.

All moneys payable by any member to the Company in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company.

*General Provisions.*

40. The memorandum of association, and the articles of association, if any, shall be delivered to the Registrar of Joint-Stock Companies hereinafter mentioned, who shall retain and register the same. It is not his duty to require evidence as to whether the several subscribers to a memorandum of association so delivered are competent to contract.

Registration of memorandum of association and articles of association with fees as in tables B. and C.

There shall be paid to the Registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct, and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct.

All fees paid to the said Registrar in pursuance of this Act shall be accounted for to Government.

41. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the Company is incorporated, and in the case of a limited Company that the Company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the Company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company, in the event of the same being wound up, as is hereinafter mentioned.

Effect of registration.

A certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

42. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such sum, not exceeding one rupee, as may be prescribed by the Company for each copy; and if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the Company so making

Copies of memorandum and articles to be given to members.

default shall for each such offence incur a penalty not exceeding twenty rupees.

Prohibition against identity of names in Companies.

**43.** No Company shall be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires.

If any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the Registrar, change its name; and upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

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# PART II.

## Distribution of Capital and Liability of Members of Companies and Associations under this Act.

### *Distribution of Capital.*

Nature of interest in Company.

**44.** The shares or other interest of any member in a Company under this Act shall be moveable property, capable of being transferred in manner provided by the regulations of the Company, and shall not be of the nature of real estate or immoveable property; and each share shall, in the case of a Company having a capital divided into shares, be distinguished by its appropriate number.

Definition of "member."

**45.** The subscribers of the memorandum of association of any Company under this Act shall be deemed to have agreed to become members of the Company whose memorandum they have subscribed, and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed with a Company

under this Act to become a member of such Company, and whose name is entered on the register of members, shall be deemed to be a member of the Company.

Transfer by personal representative.

**46.** Any transfer of the share or other interest of a deceased member of a Company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Register of members.

**47.** Every Company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars :—

(*a*) the names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a Company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) the date at which the name of any person was entered in the register as a member;

(*c*) the date at which any person ceased to be a member.

Where a share-warrant has been issued under section 30, until the warrant is surrendered, the particulars mentioned in section 34 shall be deemed to be the particulars which are required by this section to be entered in the register of members of a Company; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Any Company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company who knowingly and wilfully authorizes or permits such contravention shall incur the like penalty.

Annual list of members.

**48.** Every Company under this Act and having a capital divided into shares shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list shall state the names, addresses and occupations of all the members therein

mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars :—

(*a*) the amount of the capital of the Company and the number of shares into which it is divided ;

(*b*) the number of shares taken from the commencement of the Company up to the date of the summary ;

(*c*) the amount of calls made on each share ;

(*d*) the total amount of calls received ;

(*e*) the total amount of calls unpaid ;

(*f*) the total amount of shares forfeited ;

(*g*) the names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section ; and a copy shall forthwith be forwarded to the Registrar of Joint-Stock Companies.

Particulars to be contained in annual summary.

49.[a] After the issue by the Company of a share-warrant, the annual summary required by section 48 shall contain the following particulars (namely) :—the total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Penalty on Company, &c., not keeping a proper register.

50. If any Company under this Act and having a capital divided into shares makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such Company shall incur a penalty not exceeding fifty rupees for every day during which such default continues ; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Company to give notice of consolidation or of conversion of capital into stock.

51. Every Company under this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall, within fifteen days of such consolidation, division or conversion, give notice to

[a] Compare 30 & 31 Vic., cap. 131, section 32.

the Registrar of Joint-Stock Companies of the same, specifying the shares so consolidated, divided or converted.

**52.** Where any Company under this Act and having a capital divided into shares has converted any portion of its capital into stock and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required.

Effect of conversion of shares into stock.

**53.** No notice of any trust, express, implied or constructive, shall be entered on the register or be receivable by the Registrar in the case of Companies under this Act and registered in British India.

Entry of trusts on register.

**54.** A certificate under the common seal of the Company, specifying any shares or stock held by any member of a Company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Certificate of shares or stock.

**55.** The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall, during business hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one rupee, or such less sum as the Company may prescribe, for each inspection.

Inspection of register.

Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied.

If such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

Every director and manager of the Company who knowingly authorizes or permits such refusal shall incur the like penalty.

In addition to the above penalty any Judge of a High Court may, by order, compel an immediate inspection of the register.

**56.** Any Company under this Act may, upon giving notice by advertise-

Power to close register.

ment in some newspaper circulating in the district in which the registered office of the Company is situate and in the local official Gazette, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to Registrar.

57. Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a Company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.

If such notice is not given within the period aforesaid, the Company in default shall incur a penalty not exceeding one hundred rupees for every day during which such neglect to give notice continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Remedy for improper entry or omission of entry in register.

58. If the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the Company is situate, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such application, and any damages the party aggrieved may have sustained.

The Court may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members, or between any

members or alleged members and the Company, and whether there has or has not been default on the part of the Company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register: provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal in the manner directed by the Code of Civil Procedure [a] shall lie.

XIV of 1882.

**59.** Whenever any order has been made for rectifying the register in the case of a Company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Notice to Registrar of rectification of register.

**60.** The register of members shall be *primâ facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Register to be evidence.

*Liability of Members.*

**61.** In the event of a Company formed under this Act being wound up, every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say):—

Liability of present and past members of Company.

(*a*) No past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:

(*b*) No past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member:

(*c*) No past member shall be liable to contribute to the assets of the Company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(*d*) In the case of a Company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on

[a] See Act XIV of 1882, section 3.

the shares in respect of which he is liable as a present or past member:

(*e*) In the case of a Company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:

(*f*) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract:

(*g*) No sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall be deemed to be a debt of the Company payable to such member in a case of competition between himself and any other creditor not being a member of the Company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

EXPLANATION I.—The liability of past members is a liability to contribute to the general assets of the Company, against which assets creditors (at whatever time their debts may have been contracted) have equal rights.

EXPLANATION II.—In estimating the debts to which a past member is liable, all dividends paid on these debts under the winding-up must be deducted.

Liability of director whose liability is unlimited.

62.* With respect to the contributions to be required in the event of the winding-up of a limited Company from any director or manager whose liability is unlimited, the following modifications shall be made in the last preceding section:—

(*a*) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited Company:

(*b*) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if

* Compare 30 & 31 Vic., cap. 131, section 5.

any) which he is liable to contribute as an ordinary member of the Company :

(*c*) No contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company :

(*d*) Subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges and expenses of the winding-up.

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# PART III.

## MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

### *Provisions for Protection of Creditors.*

**Registered office of Company.**

**63.** Every Company under this Act shall have a registered office to which all communications and notices may be addressed. If any Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on.

**Notice of situation of registered office.**

**64.** Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him. Until such notice is given, the Company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

**Publication of name by a limited Company.**

**65.** Every limited Company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district, and shall have its name engraven in legible characters in such language or languages on its seal, and

shall have its name mentioned in legible characters in such language or languages in all notices, advertisements and other official publications of such Company, and in all bills of exchange, hundís, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts and letters of credit of the Company.

Penalties on non-publication of name.

**66.** If any limited Company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed.

Every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

If any director, manager or officer of such Company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such Company, or signs or authorizes to be signed on behalf of such Company any bill of exchange, hundí, promissory note, endorsement, cheque,[a] order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the Company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundí, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the Company.

*Contracts.*

Contracts how made.

**67.**[b] Contracts on behalf of any Company under this Act may be made as follows (that is to say) :—

(*a*) Any contract, which if made between private persons would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the Company in writing under the common seal of the Company; and such contract may be in the same manner varied or discharged :

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[a] Insert 'or.'

[b] Compare 30 & 31 Vic., cap. 131, section 37.

(*b*) Any contract, which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company; and such contract may in the same manner be varied or discharged:

(*c*) Any contract, which if made between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company; and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be.

Register of mortgages.

**68.** Every limited Company under this Act shall keep a register of all mortgages and charges specifically affecting property of the Company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge.

If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the Company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding five hundred rupees.

The register of mortgages required by this section shall be open to inspection by any creditor or member of the Company at all reasonable times. If such inspection is refused, any officer of the Company refusing the same, and every director and manager of the Company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

The High Court or any Judge thereof may by order compel the performance of the duty imposed by this section on a limited Company, and in addition to the above penalty may, by order, compel an immediate inspection of the register.

EXPLANATION.—Omission to register under this section a mortgage or charge does not render the same invalid. But the officers of the Company

cannot avail themselves as such of a mortgage or charge specifically affecting property of the Company and not so registered.

Certain Companies to publish statement entered in schedule.

69. Every limited banking Company, and every insurance Company and deposit, provident or benefit Society under this Act, shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the first schedule hereto, or as near thereto as circumstances will admit; and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company and in every branch office or place where the business of the Company is carried on.

If default is made in compliance with the provisions of this section, the Company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas.

List of directors to be sent to Registrar.

70. Every Company under this Act and not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of Joint-Stock Companies a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

Penalty on Company not keeping register of directors.

71. If any Company under this Act and not having a capital divided into shares makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues; and every director or manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Promissory notes, bills of exchange and hundís.

72. A promissory note, bill of exchange or hundí shall be deemed to have been made, drawn, accepted or endorsed on behalf of any Company under this Act, if made, drawn, accepted or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, drawn accepted

or endorsed by or on behalf or on account of the Company by any person acting under the authority of the Company.

**73.** If any Company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such Company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debt of the Company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

Prohibition against carrying on business with less than seven members.

*Provisions for Protection of Members.*

**74.** A general meeting of every Company under this Act shall be held once at the least every year.

General meeting of Company.

A balance sheet shall be made out and filed with the Registrar of Joint-Stock Companies within twelve months after the Company has been registered, and once at least in every year afterwards within twelve months from the filing of the balance-sheet immediately preceding; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to table A in the first schedule hereto, or as near thereto as circumstances admit.

Balance sheet.

And once at the least in every year the accounts of the Company shall be examined and the correctness of the last balance-sheet and its conformity with the law ascertained and certified by one or more auditor or auditors.

Audit.

No balance-sheet shall be filed with the Registrar unless and until its correctness and conformity with the law have been so ascertained and certified, and it has been laid before and adopted by the Company in general meeting.

If default is made in compliance with any of the provisions of this section, every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to a penalty of one thousand rupees.

*Meetings.*

**75.**[a] Every Company formed under this Act, after the commencement of this Act, shall hold a general meeting within six months after its memorandum

Company to hold meeting within six

[a] Compare 30 & 31 Vic., cap. 131, section 39.

months after registration.

of association is registered; and if such meeting is not held, the Company shall be liable to a penalty not exceeding fifty rupees a day for every day after the expiration of such six months, until the meeting is held; and every director or manager of the Company and every subscriber of the memorandum of association who knowingly authorizes or permits such default shall be liable to the same penalty.

Power to alter regulations by special resolution.

76. Subject to the provisions of this Act and to the conditions contained in the memorandum of association, any Company formed under this Act or the Indian Companies Act, 1866,[a] may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the articles of association, or in the table marked A in the first schedule, where such table is applicable to the Company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the Company. X of 1866.

Any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Power to make liability of directors unlimited.

[b]Any limited Company formed under this Act or the Indian Companies Act, 1866,[a] may by a special resolution, if authorized to do so by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited, from and after the date of such resolution, the liability of its directors or managers, or of the managing director. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in, or annexed to, every copy of the memorandum of association which is issued after the passing of the resolution. X of 1866.

Definition of "special resolution".

77. A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy (in cases where by the regulations of the Company proxies

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[a] Repealed by this Act,—see section 2.

[b] Compare 30 & 31 Vic., cap. 131, section 8.

are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed.

At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same.

Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the Company.

In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Provision where no regulations as to meetings.

**78.** In default of any regulations as to voting, every member shall have one vote, and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first schedule hereto.

In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and, in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

Registration of special resolutions.

**79.** A copy of every special resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of Joint-Stock Companies and be recorded by him.

If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty not exceeding twenty rupees for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Copies of special resolutions to be embodied in articles of association.

**80.** Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same, on payment of one rupee or such less sum as the Company may direct.

If any Company makes default in complying with the provisions of this section or section 76, it shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Execution of deeds abroad.

**81.** Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney on behalf of the Company and under his seal shall be binding on the Company and have the same effect as if it were under the common seal of the Company.

Examination of affairs of Company by inspectors.

**82.** The Local Government may appoint one or more competent inspectors to examine into the affairs of any Company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say):—

(*a*) In the case of a banking or any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued:

(*b*) In the case of any Company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

Application for inspection to be supported by evidence.

**83.** The application shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same.

The Local Government may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

84. It shall be the duty of all officers and agents of the Company to produce for the examination of the inspectors all books and documents in their custody or power. Inspection of books.

Any inspector may examine upon oath the officers and agents of the Company in relation to its business.

If any such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the Company, he shall incur a penalty not exceeding one hundred rupees in respect of each such offence.

85. Upon the conclusion of the examination, the inspectors shall report their opinions to the Local Government. Such report shall be written or printed as the Local Government directs. Result of examination how dealt with.

A copy shall be forwarded by the Local Government to the registered office of the Company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them.

All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the Company, which the Local Government is hereby authorized to do.

86. Any Company under this Act may, by a special resolution, appoint inspectors for the purpose of examining into the affairs of the Company. Power of Company to appoint inspectors.

The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Local Government, with this exception, that, instead of making their report to the Local Government, they shall make the same in such manner and to such persons as the Company in general meeting directs.

The officers and agents of the Company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

87. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report. Report of inspectors to be evidence.

Prospectus, &c., to specify dates and names of parties to certain prior contracts.

88.[a] Every prospectus of a Company, and every notice inviting persons to subscribe for shares in any Joint-stock Company, shall specify the dates[b] and the names of the parties to any agreement enforceable by law which has been entered into by the Company, or the promoters, directors or trustees thereof, before the issue of such prospectus or notice (whether subject to adoption by the directors or the Company, or otherwise), and which might reasonably influence a person in determining whether he would or would not become a shareholder in the Company; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors and officers of the Company knowingly issuing the same, as regards any person taking shares in the Company on the faith of such prospectus, unless he has had notice of such contract.

*Notices.*

Service of notices on Company.

89. Any summons, notice, order or other document required to be served upon the Company may be served by leaving the same, or sending it through the post by a registered letter addressed to the Company, at their registered office; and any notice to the Registrar of Joint-Stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him or by leaving it for him at his office.

Rules as to notices by letter.

90. Every document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post office.

Authentication of notices by Company.

91. Any summons, notice, order or proceeding requiring authentication by the Company may be signed by any director, secretary or other authorized officer of the Company, and need not be under the common seal of the Company; and the same may be in writing or in print, or partly in writing and partly in print.

*Legal Proceedings.*

Evidence of proceedings at meetings.

92. Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the Company, and of the directors or managers of the Company in cases where there are directors or managers, to be

[a] Compare 30 & 31 Vic., cap. 131, section 38.
[b] Insert 'of.'

duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings.

Until the contrary is proved, every general meeting of the Company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

EXPLANATION.—Nothing in this section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

Provision as to costs in suits brought by certain limited Companies.

**93.** Where a limited Company is plaintiff in any suit, if it appears from the evidence adduced that there is reason to believe that, if the defendant be successful in his defence, the assets of the Company will be insufficient to pay his costs, any Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Plaints in suits against members.

**94.** In any suit brought by the Company against any member to recover any call or other moneys due from such member in his character of member, it shall be sufficient to allege that the defendant is a member of the Company and is indebted to the Company in respect of a call made or other moneys due whereby a suit has accrued to the Company.

*Alteration of Forms.*

Forms to be used.

**95.** The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

Governor General in Council may alter forms.

The Governor General in Council may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as he deems requisite.

Any such table or form, when altered, shall be published in the *Gazette of India,* and, upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this Act; but no alteration made by the Governor General in Council in the table marked A contained in the first schedule shall affect any Company registered prior to the date of such alteration, or repeal, as respects such Company, any portion of such table.

*Arbitrations.*[a]

Power for Companies to refer matters to arbitration.

96. Any Company under this Act may from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other Company or person; and the Companies, parties to the arbitration, may delegate to the person or persons, to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the directors or other managing body of such Companies.

Power to alter or revoke agreements for reference.

97. The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter or revoke any agreement for reference in accordance with this Act theretofore entered into between the Companies, or any of the terms, conditions or stipulations thereof.

Agreements to be carried into effect.

98. Every reference or agreement in accordance with this Act, except so far as it is from time to time revoked or modified in accordance with this Act, shall bind the Companies, and may and shall be carried into full effect.

Reference to arbitrator.

99. Where the Companies agree, the reference shall be made to a single arbitrator.

Reference to two or more arbitrators.

100. Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit:—

where there are two Companies, the reference shall be made to two arbitrators;

where there are three or more Companies, the reference shall be made to so many arbitrators as there are Companies.

Appointment of arbitrators by Companies.

101. Where there are to be two or more arbitrators, every Company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies.

Appoint-

102. Where there are to be two or more arbitrators, if any of the Com-

[a] Compare 22 & 23 Vic., cap. 59.

panies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

ment of arbitrators by Local Government.

**103.** Where the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the Company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment of arbitrators by Companies to supply vacancies.

**104.** Where the Company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government may appoint an arbitrator.

Appointment of arbitrators by Local Government to supply vacancies.

The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

**105.** When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the same without the previous consent in writing of the other Company or every other Company in writing under their common seal.

Appointment of arbitrator not revocable.

**106.** Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Appointment of umpire by arbitrators.

**107.** If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment of umpire by Local Government.

**108.** Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment of umpire by arbitrators to supply vacancy.

Appointment of umpire by Local Government to supply vacancy.

**109.** If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness or failure to act of their umpire, then, on the application of the Companies or any of them, the Local Government may appoint an umpire.

The umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Succeeding arbitrators and umpires to have powers of predecessors.

**110.** Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

Reference to umpire.

**111.** Where there are two or more arbitrators, if they do not within such a time as the Companies agree on, or failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Power for arbitrators, &c., to call for books, &c., and examine witnesses on oath.

**112.** The arbitrator, and the arbitrators and the umpire respectively may call for the production of any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

Procedure in the arbitration.

**113.** Except where and as the Companies otherwise agree, the arbitrator, and the arbitrators and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Arbitration may proceed in absence of Companies.

**114.** The arbitrator, and the arbitrators and the umpire respectively may proceed in the absence of all or any of the Companies in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators or the umpire shall think fit so to proceed.

Several awards may be made.

**115.** The arbitrator, and the arbitrators and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on

were all the matters referred, and that notwithstanding the other matters or any of them be not then or thereafter awarded on.

**116.** The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator or the arbitrators or the umpire, shall be binding and conclusive on all the Companies.

Awards made in due time to bind all parties.

**117.** Provided always that (except where and as the Companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Power for umpire to extend period for making his award.

**118.** No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

Awards not to be set aside for informality.

**119.** Except only so far as the Companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted or suffered shall be done, omitted or suffered accordingly.

Awards to be obeyed.

**120.** Full effect shall be given by the Courts according to their respective jurisdictions, and by the Companies respectively, and otherwise, to all agreements, references, arbitrations and awards in accordance with this Act; and the performance or observance thereof may, where the Courts think fit, be compelled by any process against the Companies respectively or their respective property that the Courts or any Judge thereof shall direct, and where requisite frame, for the purpose.

Agreements, arbitrations and awards to have effect.

**121.** Except where and as the Companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators and the umpire respectively.

Costs of arbitration and award.

**122.** Except where and as the Companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and in other respects the Companies shall bear their own respective costs.

Payment of costs.

**123.** On the application of any party interested, the submission to any such arbitration may be filed in the High Court, and an order of reference may

Submission to arbitration

to be filed in Court.

be made thereon, with any directions the Court thinks fit; and the provisions of the Code of Civil Procedure[a] shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder. XIV of 1882.

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# PART IV.

## WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

### *Preliminary.*

Meaning of "contributory."

**124.** The term "contributory" shall mean every person liable to contribute to the assets of a Company under this Act in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Nature of liability of contributory.

**125.** The liability of any person to contribute to the assets of a Company under this Act in the event of the same being wound up shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful, in the case of the insolvency of any contributory, to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes situate outside the towns of Calcutta, Madras and Bombay.

Contributories in case of death.

**126.** If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the Company in discharge of the liability of such deceased contributory; and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.

Contributories in case of insolvency.

**127.** If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to

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[a] See Act XIV of 1882, section 3.

prove* against the estate of such insolvent, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such insolvent in respect of his liability to contribute to the assets of the Company being wound up.

*Winding-up by Court.*

Circumstances under which Company may be wound up by Court.

**128.** A Company under this Act may be wound up by the Court as hereinafter defined under the following circumstances (that is to say) :—

(*a*) whenever the Company has passed a special resolution requiring the Company to be wound up by the Court;

(*b*) whenever the Company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year;

(*c*) whenever the members are reduced in number to less than seven;

(*d*) whenever the Company is unable to pay its debts;

(*e*) whenever for any other reason of a like nature the Court is of opinion that it is just and equitable that the Company should be wound up.

Company when deemed unable to pay its debts.

**129.** A Company under this Act shall be deemed to be unable to pay its debts—

(*a*) whenever a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at its registered office, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum or to secure or compound for the same to the reasonable satisfaction of the creditor;

(*b*) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company is returned unsatisfied in whole or in part;

(*c*) whenever it is proved to the satisfaction of the Court that the Company is unable to pay its debts.

Definition of "the Court."

**130.** The expression "the Court" as used in this Part of this Act shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the Company is situate, unless in the regulations

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* *Sic.* Read 'proof.'

for the management of the Company it shall be stipulated that the Company, if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras or Bombay (as the case may be), or by the Chief Court of the Panjáb, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction.

Definition of "debts."

The expression "debts" as used in this part of this Act means debts actually due, of which the creditor could claim immediate payment, except in the case of a Company issuing or liable under policies of assurance upon human life within British India, or granting annuities upon human life within British India. [a] In the case of such a Company (hereinafter called a life-assurance Company), the expression "debts," as so used, includes also contingent or prospective liability under policies and annuity[b] and other existing contracts.

Application for winding-up to be made by petition.

**131.** Any application to the Court for the winding-up of a Company under this Act shall be by petition, which may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories, of the Company, or by all or any of the above parties, together or separately.

The petition must allege facts which, if proved, will justify an order for winding-up the Company. Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

[c] In the case of a life-assurance Company the Court shall not give a hearing to the petition until security for costs for such amount as the Judge thinks reasonable is given, and until a *primâ facie* case is also established to the satisfaction of the Judge; and, where the Company has an uncalled capital of an amount sufficient, with the future premiums receivable by the Company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time to enable the uncalled capital, or a sufficient part thereof, to be called up; and, if at the end of the original or any suspended time for which the proceedings have been suspended such an amount has not been realised by means of calls as with the already invested assets is equal to the

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[a], [c] Compare 33 & 34 Vic., cap. 61, section 21.
[b] *Sic.* Read 'annuities.'

liabilities, an order shall be made on the petition as if the Company had been proved to be unable to pay its debts.

EXPLANATION.—Nothing in this section authorizes the presentation of a petition by a member of a Company who is indebted to the Company in respect of a call made, or other moneys due.

Contributory when not qualified to present winding-up petition.

**132.** [a] No contributory of a Company under this Act shall be capable of presenting a petition for winding-up such Company unless the members of the Company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

Provided that, where a share has, during the whole or any part of the six months, been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

Commencement of winding-up by Court.

**133.** A winding-up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Court may grant injunction.

**134.** The Court may, at any time after the presentation of a petition for winding-up a Company under this Act, and before making an order for winding-up the Company, upon the application of the Company or of any creditor or contributory of the Company, restrain further proceedings in any suit or proceeding against the Company, upon such terms as the Court thinks fit.

The Court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.

Course to be pursued by Court on hearing petition.

**135.** Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Suits to be stayed after order for winding-up.

**136.** When an order has been made for winding-up a Company under this Act, no suit or other proceeding shall be proceeded with or commenced

[a] Compare 30 & 31 Vic., cap. 131, section 40.

against the Company except with the leave of the Court and subject to such terms as the Court may impose.

Copy of order to be forwarded to Registrar.

**137.** When an order has been made for winding-up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company to the Registrar of Joint-Stock Companies, who shall make a minute thereof in his books relating to the Company.

Such order shall be deemed to be notice of discharge to the servants of the Company, except when the business of the Company is continued.

Power of Court to stay proceedings.

**138.** Such Court may, at any time after an order has been made for winding-up a Company, upon the application of any creditor or contributory of the Company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Effect of order on share-capital of Company limited by guarantee.

**139.** When an order has been made for winding-up a Company limited by guarantee and having a capital divided into shares, any share-capital that may not have been called up shall be deemed to be assets of the Company and to be a debt due to the Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Court may have regard to wishes of creditors or contributories.

**140.** The Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, and may, if it thinks fit, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard is to be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

*Official Liquidators.*

Appointment of official liquidator.

**141.** For the purpose of conducting the proceedings in winding-up a Company and assisting the Court therein, there may be appointed a person or persons, to be called an official liquidator or official liquidators.

The Court may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators.

In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidators is to be done by all or any one or more of such persons.

The Court may also determine whether any, and what, security is to be given by any official liquidator on his appointment.

If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

A receiver shall not be appointed of assets in the hands of an official liquidator.

**Resignations, removals, filling up vacancies and compensation.**

**142.** Any official liquidator may resign or be removed by the Court on due cause shown. Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

**Style and duties of official liquidator.**

**143.** The official liquidator shall be described by the style of the official liquidator of the particular Company in respect of which he is appointed, and not by his individual name. He shall take into his custody, or under his control, all the property, effects and actionable claims to which the Company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the Company as may be imposed by the Court.

**Powers of official liquidator.**

**144.** The official liquidator shall have power, with the sanction of the Court, to do the following things :—

(*a*) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company;

(*b*) to carry on the business of the Company so far as may be necessary for the beneficial winding-up of the same;

(*c*) to sell the immoveable and moveable property of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels;

(*d*) to do all acts, and to execute, in the name and on behalf of the Company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the Company's seal;

(*e*) to prove, rank, claim and draw a dividend, in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency, as a separate debt due from such insolvent, and rateably with the other separate creditors;

(*f*) to draw, accept, make and endorse any bill of exchange, hundí or promissory note in the name and on behalf of the Company; also to raise, upon the security of the assets of the Company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill, hundí or note as aforesaid on behalf of the Company shall have the same effect with respect to the liability of such Company as if such bill[a] or note had been drawn, accepted, made or endorsed by or on behalf of such Company in the course of carrying on the business thereof;

(*g*) to take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory, and to do, in his official name, any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the Company; and, in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself: provided that nothing herein contained shall be deemed to affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay respectively;[b]

(*h*) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets.

Discretion of official liquidator.

**145.** The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Appointment

**146.** The official liquidator may, with the sanction of the Court, appoint

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[a] Insert 'hundí.'

[b] See Act II of 1874, as amended by Act IX of 1881.

an attorney or vakíl to assist him in the performance of his duties: provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

of attorney or vakíl to official liquidator.

*Ordinary Powers of Court.*

**147.** As soon as may be after making an order for winding-up the Company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of section 58, and shall cause the assets of the Company to be collected and applied in discharge of its liabilities existing at the date of the said order.

Collection and application of assets.

**148.** In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right, and persons who are contributories as being representatives of, or being liable to the debts of, others.

Provision as to representative contributories.

**149.** The Court may, at any time after making an order for winding-up a Company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent or officer of the Company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the Company is *primâ facie* entitled.

Power of Court to require delivery of property.

**150.** The Court may, at any time after making an order for winding-up the Company, make an order on any contributory for the time being settled on the list of contributories directing payment to be made, in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents to the Company, exclusive of any moneys which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Part of this Act.

Power of Court to order payment of debts by contributory.

The Court may, in making such order, when the Company is not limited, allow to such contributory, by way of set-off, any moneys due to him or the estate which he represents from the Company on any independent dealing or contract with the Company, but not any moneys due to him as a member of the Company in respect of any dividend or profits:

Provided that, when all the creditors of any Company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any

contributory from the Company may be allowed to him by way of set-off against any subsequent call or calls.

[1] In the event of the winding-up of any limited Company, the Court, if it thinks fit, may make to any director or manager of such Company whose liability is unlimited the same allowance by way of set-off as under this section it may make to a contributory where the Company is not limited.

Power of Court to make calls.

**151.** The Court may, at any time after making an order for winding-up a Company, and either before or after it has ascertained the sufficiency of the assets of the Company, make calls on, and order payment thereof by, all or any of the contributories, for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves.

The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Power of Court to order payment into Bank.

**152.** The Court may order any contributory, purchaser or other person from whom money is due to the Company to pay the same into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court.

**153.** All moneys, bills, hundís, notes and other securities paid and delivered into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof respectively, in the event of a Company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the Court may direct.

Provision in case of representative contributory not paying moneys ordered.

**154.** If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable or immoveable, or both, and of compelling payment thereout of the moneys due.

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[1] Compare 30 & 31 Vic., cap. 131, section 6.

**155.** Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due or ordered to be paid are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever. Order conclusive evidence.

**156.** The Court may fix a certain day or certain days on or within which creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved. Court may exclude creditors not proving within certain time.

**157.** The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto. Court to adjust rights of contributories.

**158.** The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the Company of the costs, charges and expenses incurred in winding-up any Company in such order of priority as the Court thinks just. Court to order costs.

**159.** When the affairs of the Company have been completely wound up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly. Dissolution of Company.

**160.** Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such Company. Registrar to make minute of dissolution of Company.

**161.** If the official liquidator makes default in reporting to the Registrar, in the case of a Company being wound up by the Court, the order that the Company be dissolved, he shall be liable to a penalty not exceeding one hundred rupees for every day during which he is so in default. Penalty for not reporting dissolution of Company.

*Extraordinary powers of Court.*

**162.** The Court may, after it has made an order for winding-up the Company, summon before it any officer of the Company, or person known or suspected to have in his possession any of the estate or effects of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the Company. Power of Court to summon persons before it suspected of having property of Company.

If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and

allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination.

The Court may require any such officer or person to produce any documents in his custody or power relating to the Company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

Examination of parties by Court.

**163.** The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Power to arrest contributory about to abscond or to remove or conceal any of his property.

**164.** The Court may, at any time before or after it has made an order for winding-up a Company, upon proof being given that there is probable cause for believing that any contributory to such Company is about to quit British India or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested and his books, papers, moneys, securities for moneys, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Powers of Court cumulative.

**165.** Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate; and such proceedings may be instituted accordingly.

*Enforcement of, and Appeal from, Orders.*

Power to enforce orders.

**166.** All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

Order made in any Court to be enforced by other Courts.

**167.** Any order made by a Court for or in the course of the winding-up of a Company under this Act shall be enforced in any part of British India, other than that in which such Court is situate, in the Court that would have had jurisdiction in respect of such Company if the registered office of the Com-

pany had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Mode of dealing with orders to be enforced by other Courts.

**168.** Where any order or decree made by one Court is required to be enforced by another Court as hereinbefore provided, a certified copy of the order or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order or decree having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order or decree, in the same manner as if it were the order or decree of the Court enforcing the same.

Appeals from orders.

**169.** Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding-up of a Company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure,[a] unless such time is extended by the Court of appeal.

XIV of 1882.

Judicial notice to be taken of signature of officers.

**170.** In all proceedings under this Part of this Act, every Court, Judge and person judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of any other Court, and also of the official seal of any other Court, when such seal is appended to any document made, issued or signed under the provisions of this Part of this Act, or any official copy thereof.

Special Commissioners for receiving evidence.

**171.** The Judges of the District Courts, who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose of taking evidence under this Act in cases where any Company is wound up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner, although such Commissioner is out of the jurisdiction of the Court that made the order or decree for winding-up the Company.

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[a] See Act XIV of 1882, section 3.

Every such Commissioner shall, in addition to any power of summoning and examining witnesses and requiring the production or delivery of documents and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding-up the Company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

Affidavits, &c., may be sworn in British India, Great Britain or Ireland, or abroad, before any competent Court or person.

**172.** If any affidavit, affirmation or declaration, required to be sworn or made under the provisions or for the purposes of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of Her Majesty in foreign parts, before any Court, Judge or person lawfully authorized to take and receive affidavits, affirmations or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Part of this Act.

*Voluntary Winding-up of Company.*

Circumstances under which Company may be wound up voluntarily.

**173.** A Company under this Act may be wound up voluntarily—

(*a*) whenever the period, if any, fixed for the duration of the Company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily;

(*b*) whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily;

(*c*) whenever the Company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the Company

cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same:

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

**174.** A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up. When the winding-up is in pursuance of a special resolution, it shall be deemed to commence at the time of the passing, under section 77, of the confirmatory resolution. Commencement of voluntary winding up.

**175.** Whenever a Company is wound up voluntarily, the Company shall, from the date of the commencement of such winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the Company, taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding that its regulations otherwise provide, continue until the affairs of the Company are wound up. Effect of voluntary winding-up on status of Company.

**176.** Notice of any special resolution or extraordinary resolution passed for winding-up a Company voluntarily shall be given by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate. Notice of resolution to wind up voluntarily.

**177.** The following consequences shall ensue upon the voluntary winding-up of a Company:— Consequence of voluntary winding-up.

(*a*) the assets of the Company shall be applied in satisfaction of its liabilities *pari passu* as they exist at the commencement of the winding-up, and subject thereto shall, unless the regulations of the Company otherwise provide, be distributed amongst the members according to their rights and interests in the Company:

(*b*) liquidators shall be appointed for the purpose of winding-up the affairs of the Company and distributing the assets:

(*c*) the Company in general meeting shall appoint such persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them:

(*d*) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:

(*e*) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the Company in general meeting, or the liquidators, may sanction the continuance of such powers:

(*f*) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two:

(*g*) the liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidators:

(*h*) the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the Company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories:

(*i*) the liquidators may, at any time after the passing of the resolution for winding-up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same:

(*j*) the liquidators shall pay the debts of the Company, and adjust the rights of the contributories amongst themselves.

Effect of winding-up on share-capital of Company limited by guarantee.

**178.** Where a Company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share-capital that may not have been called up shall be deemed to be assets of the Company, and to be a debt due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Power of Company to delegate authority to appoint liquidators.

**179.** A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with

respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised.

Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the Company.

Arrangement when binding on creditors.

**180.** Any arrangement which a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, shall have entered into with its creditors shall be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Power of creditor or contributory to appeal.

**181.** Any creditor or contributory of a Company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary or confirm the same.

Power for liquidators or contributories in voluntary winding-up to apply to Court.

**182.** Where a Company is being wound up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court. Any such application may be made by motion. The Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power of liquidators to call general meeting.

**183.** Where a Company is being wound up voluntarily, the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution or extraordinary resolution, or for any other purposes they think fit.

In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted, during the preceding year.

Power to fill up vacancy in office of liquidators.

**184.** If any vacancy occurs in the office of liquidators appointed by the Company, by death, resignation or otherwise, the Company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy; and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the Company, be determined by the Court.

Power of Court to appoint liquidators.

**185.** If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators. The Court may also, on due cause shown, remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

Liquidators on conclusion of winding-up to make up an account.

**186.** As soon as the affairs of the Company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the Company disposed of: and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators.

The meeting shall be called by advertisement, specifying the time, place and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the manner specified in section 176.

Liquidators to report meeting to Registrar.

**187.** The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held; and, on the expiration of three months from the date of the registration of such return, the Company shall be deemed to be dissolved.

If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding fifty rupees for every day during which such default continues.

Costs of voluntary liquidation.

**188.** All costs, charges and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

Saving of rights of creditors.

**189.** The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

**190.** Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Power of Court to adopt proceedings of voluntary winding-up.

*Winding-up subject to the Supervision of the Court.*

**191.** When a resolution has been passed by a Company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally upon such terms and subject to such conditions, as the Court thinks just.

Power of Court to direct winding-up subject to supervision.

**192.** A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up the Company by the Court.

Petition for winding-up subject to supervision.

**193.** The Court may, in determining whether a Company is to be wound up altogether by the Court, or subject to the supervision of the Court, in the appointment of a liquidator or of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

Court may have regard to wishes of creditors.

In the case of creditors, regard shall be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

**194.** Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator.

Power to Court to appoint additional liquidator in winding-up subject to supervision.

Any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations and in all respects stand in the same position, as if he had been appointed by the Company.

The Court may, from time to time, remove any liquidator so appointed by

the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of order of Court for winding-up subject to supervision.

**195.** Where an order is made for a winding-up subject to the supervision of the Court, the liquidator appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily.

Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding-up the Company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the Company altogether by the Court.

In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidators.

**196.** Where an order has been made for the winding-up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may, in such last-mentioned order or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidators.

*Supplemental Provisions.*

Dispositions after commencement of winding-up avoided.

**197.** Where any Company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property of the Company, and every transfer of shares or alteration in the status of the members of the Company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void.

Books of Company to be evidence.

**198.** Where any Company is being wound up, all books, accounts and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of-

**199.** Where any Company has been wound up under this Act and is about

to be dissolved, the books, accounts and documents of the Company and of the liquidator may be disposed of in the following way, that is to say, where the Company has been wound up by, or subject to the supervision of, the Court, in such way as the Court directs, and, where the Company has been wound up voluntarily, in such way as the Company by an extraordinary resolution directs.

books, accounts and documents of Company.

But, after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books.

**200.** Where an order has been made for winding-up a Company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

General scheme of liquidation may be sanctioned.

**201.** The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, whereby the Company may be rendered liable.

Power to compromise.

**202.** The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting or supposed to subsist between the Company and any contributory or alleged contributory, or other debtor or person apprehending liability to the Company, and all questions in any way relating to or affecting the assets of the Company or the winding-up of the Company, generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

Where compromise proposed, Court may order a meeting of creditors, &c., to decide as to such compromise.

203. [a] Where any compromise or arrangement shall be proposed between a Company which is, at the commencement of this Act or afterwards, in the course of being wound up either voluntarily or by or under the supervision of the Court, and the creditors of such Company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and, if a majority in number, representing three-fourths in value, of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said Company.

Power for liquidators to accept shares, &c., as a consideration for sale of property of Company.

204. Where any Company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another Company, the liquidators of the first-mentioned Company may, with the sanction of a special resolution of the Company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation or part compensation for such transfer or sale, shares, debentures, policies or other like interests in such other Company, for the purpose of distribution amongst the members of the Company being wound up, or may enter into any other arrangement whereby the members of the Company being wound up may, in lieu of receiving cash, shares, debentures, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing Company.

Any sale made, or arrangement entered into, by the liquidator in pursuance of this section shall be binding on the members of the Company being wound up; subject to this proviso that, if any member of the Company being wound up, who has not voted in favour of the special resolution passed by the Company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special

[a] Compare 33 & 34 Vic., cap. 104, section 2.

resolution was passed, such dissentient member may, by writing addressed and left as last aforesaid, require the liquidator to do one of the following things as the liquidator may prefer (that is to say) :—either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned; such purchase-money to be paid before the Company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution.

No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to, or concurrently with, any resolution for winding-up the Company or for appointing liquidators; but, if an order be made within a year for winding-up the Company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Mode of determining price.

**205.** The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration under the provisions next hereinafter contained.

Appointment of arbitrator when questions are to be determined by arbitration.

**206.** When any dispute so directed to be settled by arbitration has arisen, then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred.

After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

If for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

**207.** If before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place;

and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte;* and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal or disability as aforesaid.

Appointment of umpire.

**208.** Where more arbitrators than one have been appointed, they shall, before entering upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ.

If such umpire die, or refuse, or for seven days neglect, to act, they shall forthwith, after such death, refusal or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Power of arbitrators to call for books, &c.

**209.** The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath.

Costs to be in discretion of arbitrators.

**210.** The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpire, as the case may be.

Submission to arbitration may be filed in Court.

**211.** On the application of either of the parties, the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of the Code of Civil Procedure [a] shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder. XIV of 1882.

Certain attachments, distresses and executions to be void.

**212.** Where any Company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress or execution put in force, without the leave of the Court, against the estate or effects of the Company after the commencement of the winding-up shall be void.

Nothing in this section applies to proceedings by the Government.

Fraudulent preference.

**213.** Every conveyance, mortgage, delivery of goods, payment, execution or other act relating to property, which would, if made or done by, or against, any individual trader, be deemed, in the event of his insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any Company, be deemed, in the

[a] See Act XIV of 1882, section 3.

event of such Company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly.

For the purposes of this section, the making of an application for winding-up a Company shall, in the case of a Company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding-up the Company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act, of all its estate and effects to trustees, for the benefit of all its creditors, shall be void.

**Power of Court to assess damages against delinquent directors and officers.**

**214.** Where, in the course of the winding-up of any Company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company, has misapplied or retained in his own hands, or become liable or accountable for, any moneys of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator or of any creditor or contributory of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager or other officer, and compel him to repay any moneys so misapplied or retained, or for which such officer has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

EXPLANATION I.—The banker of a Company is not, as such, an officer within the meaning of this section.

EXPLANATION II.—Proceedings cannot be taken under this section against the representatives of a deceased officer.

**Penalty on falsification of books.**

**215.** If any director, officer or contributory of any Company wound up under this Act destroys, mutilates, alters, falsifies or fraudulently secretes any books, papers, writings or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or other document belonging to the Company, with intent to defraud or deceive any person, every person so offending shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees.

**Prosecution**

**216.** Where any order is made for winding-up a Company by the Court

of delinquent directors in case of winding-up by Court.

or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators or the liquidators (as the case may be) to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the Company.

Penalty for false evidence.

217. [a] If any person, upon any examination upon oath authorized under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding-up of any Company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years and shall also be liable to fine.

Winding-up may be referred to District Court.

218. [b] Where the High Court makes an order for winding-up a Company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding-up the Company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court.

Transfer of winding-up from one District Court to another.

219. [c] If during the progress of a winding-up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court, the High Court may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

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# PART V.

## Registration-office.

Constitution of registration-office.

220. The registration of Companies under this Act shall be conducted as follows (that is to say) :—

(*a*) The Local Government may, after the sanction of the Governor General in Council to the creation of any such offices shall have been obtained, from time to time appoint such Registrars, Assistant Re-

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[a] Compare Act XLV of 1860, section 193.

[b] Compare 30 & 31 Vic., cap. 131, section 41.

[c] Compare 30 & 31 Vic., cap. 131, section 42.

gistrars, clerks and servants as it may think necessary for the registration of Companies under this Act, and remove them at pleasure :

(*b*) The Local Government may make such regulations as it thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks and servants as aforesaid :

(*c*) The Local Government may from time to time determine the places at which offices for the registration of Companies are to be established, so that there be at all times maintained in each of the towns of Calcutta, Madras and Bombay at least one such office, and that no Company shall be registered except at an office within that part of British India in which, by the memorandum of association, the registered office of the Company is declared to be established :

(*d*) The Local Government may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of Companies :

(*e*) Every person may inspect the documents kept by the Registrar of Joint-Stock Companies. There shall be paid for such inspection such fees as may be directed by the Local Government, not exceeding one rupee for each inspection. Any person may require a certificate of the incorporation of any Company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar. There shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Local Government may direct, not exceeding three rupees for the certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract :

(*f*) The existing Registrar, Assistant Registrars, clerks and other officers and servants in the office for the registration of Joint-Stock Companies shall, during the pleasure of the Local Government, hold the offices and receive the salaries hitherto held and received by them ; but they shall, in the execution of their duties, conform to any regulations that may be issued by the Local Government :

(*g*) There shall be paid to any Registrar, Assistant Registrar, clerk or servant that may hereafter be employed in the registration of Joint-Stock Companies such salaries as the Local Government may, with the sanction of the Governor General in Council, direct :

(*h*) Whenever any act is herein directed to be done to or by the Registrar

of Joint-Stock Companies, such act shall, until the Local Government otherwise directs, be done to or by the existing Registrar of Joint-Stock Companies, or in his absence to or by such person as the Local Government may for the time being authorize. But, in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Local Government may appoint.

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# PART VI.

## APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT-STOCK COMPANIES ACTS.

Application of Act to Companies formed under Act XIX of 1857 or VII of 1860.

**221.** Subject as hereinafter mentioned, this Act, with the exception of Table A in the first schedule, shall apply to Companies formed and registered under Act No. XIX of 1857[a] and Act No. VII of 1860,[b] or either of them, in the same manner, in the case of a limited Company, as if such Company had been formed and registered under this Act as a Company limited by shares, and, in the case of Company other than a limited Company, as if such Company had been formed and registered as an unlimited Company under this Act; with this qualification, that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any Company formed and registered under the said Acts or either of them, extend to altering any provisions contained in the table marked B annexed to Act No. XIX of 1857,[a] and shall also, in the case of an unlimited Company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association.

XIX of 1857. VII of 1860.

XIX of 1857.

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[a] Repealed by Act X of 1866, section 219 and Schedule III. Table B, however, remains in force—see section 2, clause (c), of this Act.

[b] Repealed by Act X of 1866, section 219 and Schedule III.

XIX of 1857. VII of 1860.

**222.** This Act shall apply to Companies registered but not formed under the said Acts or either of them, in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this Act; with this qualification, that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them.

Application of Act to Companies registered under Act XIX of 1857 or VII of 1860.

XIX of 1857. VII of 1860.

**223.** Any Company registered under the said Acts or either of them may cause its shares to be transferred in manner hitherto in use, or in such other manner as the Company may direct.

Mode of transferring shares.

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# PART VII.

## COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

**224.** With the exceptions made in the next following section, and subject to the regulations therein contained, every Company existing at the time of the commencement of this Act, including any Company registered under either of the said Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any Act of Parliament or Act of the Governor General in Council other than this Act, or of Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

Companies capable of being registered.

XIX of 1857. VII of 1860.

**225.** The following regulations shall be observed with respect to the registration of Companies under this Part of this Act (that is to say) :—

Regulations as to registration of existing Companies.

(*a*) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other than this Act, or by Letters Patent, and not being a Joint-Stock Company as hereinafter defined, shall register under this Act in pursuance of this Part thereof:

(*b*) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other than this Act, or by Letters Patent, shall register under this Act in pursuance of this Part thereof as an unlimited Company, or as a Company limited by guarantee:

(*c*) No life-assurance Company existing at the time of the commencement of this Act, and no Company that is not a Joint-Stock Company as hereinafter defined, shall in pursuance of this Part of this Act register under this Act as a Company limited by shares:

(*d*) No Company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by proxy in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose:

(*e*) Where a Company, not having the liability of its members limited by Act of Parliament or Act of the Governor General in Council, or by Letters Patent, is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:

(*f*) Where a Company is about to register as a Company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.

In computing any majority under this section, when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company of which he is a member.

Definition of "Joint-Stock Company."

**226.** For the purposes of this Part of this Act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a Joint-Stock Company shall be deemed to be a Company having a permanent paid up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such Company, when registered with limited liability under this Act, shall be deemed to be a Company limited by shares.

227. Previously to the registration, in pursuance of this Part of this Act, of any Joint-Stock Company, there shall be delivered to the Registrar the following documents (that is to say) :— Requisitions for registration by Companies.

(*a*) A list showing the names, addresses and occupations of all persons who, on a day named in such list and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:

(*b*) A copy of any Act of Parliament or Act of the Governor General in Council, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the Company:

(*c*) If any such Joint-Stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say) :—

the nominal capital of the Company and the number of shares into which it is divided;

the number of shares taken and the amount paid on each share;

the name of the Company, with the addition of the word "limited" as the last word thereof;

with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

228. Previously to the registration in pursuance of this Part of this Act of any Company not being a Joint-Stock Company, there shall be delivered to the Registrar a list showing the names, addresses and occupations of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, Act of the Governor General in Council, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee. Requisitions for registration by existing Company not being a Joint stock Company.

229. Where a Joint-Stock Company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the Power for existing Company to register amount of stock instead of shares.

amount of stock belonging to the Company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Authentication of statements of existing Companies.

**230.** The lists of members and directors and any other particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made before a Justice of the Peace or a District Judge.

Registrar may require evidence as to nature of Company.

**231.** The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing Company is or not a Joint-Stock Company as hereinbefore defined.

On registration of banking Company with limited liability, notice to be given to customers.

**232.** Every banking Company existing at the date of the passing of this Act which registers itself as a limited Company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm having a banking account with the Company.

Such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same into the post addressed to him or them, at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company.

In case the Company omits to give any such notice as is hereinbefore required to be given, then, as between the Company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain Companies from payment of fees.

**233.** No fees shall be charged in respect of the registration in pursuance of this Part of this Act of any Company in cases where such Company is not registered as a limited Company, or, where, previously to its being registered as a limited Company, the liability of the shareholders was limited by some Act of Parliament, or Act of the Governor General in Council, or by Letters Patent.

Company to change name.

**234.** Any Company authorized by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited."

Certificate of registration of existing Companies.

**235.** Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B and C in the first schedule hereto, the

Registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this Act, and, in the case of a limited Company, that it is limited; and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal.

**236.** A certificate of incorporation given at any time to any Company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a limited or unlimited Company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act.

Certificate to be evidence of compliance with Act.

**237.** All such property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims, as may belong to or be vested in the Company at the date of its registration under this Act, shall, on registration, pass to and vest in the Company as incorporated under this Act for all the estate and interest of the Company therein.

Transfer of property to Company.

**238.** The registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of, such Company previously to such registration.

Registration under this Act not to affect obligations incurred previously to registration.

**239.** All such suits and other legal proceedings as may at the time of the registration of any Company registered in pursuance of this Part of this Act have been commenced by or against such Company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place. Nevertheless, execution shall not issue against the effects of any individual member of such Company upon any decree or order obtained in any suit or proceeding so commenced as aforesaid; but, in the event of the property and effects of the Company being insufficient to satisfy such decree or order, an order may be obtained for winding-up the Company.

Continuation of existing suits.

**240.** When a Company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company, in the same manner

Effect of registration under Act.

and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such Company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following (that is to say) :—

(*a*) That table A in the first schedule to this Act shall not, unless adopted by special resolution, apply to any Company registered under this Act in pursuance of this Part thereof :

(*b*) That the provisions of this Act relating to the numbering of shares shall not apply to any Joint-Stock Company whose shares are not numbered :

(*c*) That no Company shall have power to alter any provisions contained in any Act of Parliament, Act of the Legislative Council[a] or Act of the Governor General in Council relating to the Company :

(*d*) That no Company shall have power, without the sanction of the Governor General in Council, to alter any provision contained in any Letters Patent relating to the Company :

(*e*) In the event of the Company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted prior to registration, who is liable to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up, all sums due from him in respect or any such liability as aforesaid. In the event of the death or insolvency of any such contributory as last aforesaid, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply :

(*f*) Nothing herein contained shall authorize any Company to alter any such provisions contained in any deed of settlement, contract of

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[a] *Sic.*

co-partnery, Letters Patent or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Act.

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the Company.

Power of Court to restrain further proceedings.

**241.** The Court may, at any time after the presentation of a petition for winding-up a Company registered in pursuance of this Part of this Act, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or legal proceeding against any contributory of the Company as well as against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Order for winding-up Company.

**242.** Where an order has been made for winding-up a Company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

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# PART VIII.

## Application of Act to Unregistered Companies.

Winding-up unregistered Companies.

**243.** Subject as hereinafter mentioned, any Partnership, Association or Company, except Railway Companies incorporated by Act of Parliament or Act of the Governor General in Council, consisting of more than seven members and not registered under this Act, and hereinafter included under the term "unregistered Company," may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such Company with the following exceptions and additions:—

(*1*) An unregistered Company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of British India where its principal place of business is situate, or, if it has a principal place of business situate in more than one part

of British India, then in each part of British India where it has a principal place of business. Moreover, the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall, for all the purposes of the winding-up of such Company, be deemed to be the registered office of the Company :

(2) No unregistered Company shall be wound up under this Act voluntarily, or subject to the supervision of the Court :

(3) The circumstances under which an unregistered Company may be wound up are as follows (that is to say) :—

(*a*) whenever the Company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs ;

(*b*) whenever the Company is unable to pay its debts ;

(*c*) whenever the Court is of opinion that it is just and equitable that the Company should be wound up :

(4) An unregistered Company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) whenever a creditor to whom the Company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at the principal place of business of the Company or by delivering to the secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor ;

(*b*) whenever any suit or other proceeding has been instituted against any member of the Company for any debt or demand due or claimed to be due from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such suit or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or

by delivering it to the secretary or some director, manager or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, the Company has not, within ten days after service of such notice, paid, secured or compounded for such debt or demand, or procured such suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(*c*) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the Company, is returned unsatisfied;

(*d*) whenever it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts.

**Who to be deemed a contributory in the event of Company being wound up.**

**244.** In the event of an unregistered Company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company.

Every such contributory shall be liable to contribute to the assets of the Company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

In the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of an insolvent contributory, shall apply.

**Power of Court to restrain further proceedings.**

**245.** The Court may, at any time after the making of an application for winding-up an unregistered Company, and before making an order for winding-up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or proceeding against any contributory of the Company, or against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

**Effect of**

**246.** Where an order has been made for winding-up an unregistered Com-

Order for winding-up Company.

pany, in addition to the provisions hereinbefore contained in the case of Companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

Provision in case of unregistered Company.

**247.** If any unregistered Company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding-up such Company or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims and rights into[a] and out of property, moveable and immoveable, and including actionable claims, as may belong to or be vested in the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity, as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the Company and recovering the property thereof.

Provisions of this Part of Act cumulative.

**248.** The provisions made by this Part of this Act with respect to unregistered Companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding-up Companies by the Court.

The Court or official liquidator may, in addition to anything contained in this Part of this Act, exercise any powers or do any act in the case of unregistered Companies which might be exercised or done by it or him in winding-up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound up, be deemed to be a Company under this Act, and then only to the extent provided by this Part of this Act.

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## PART IX.

### Miscellaneous Provisions.

Company not to buy its own shares.

**249.** No Company under this Act shall have power to buy its own shares.

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[a] *Sic.* Read 'in, to.'

Saving of existing proceedings for winding-up.

**250.** Where, previously to the commencement of this Act, an order has been made for winding-up a Company under the Indian Companies Act, 1866,[a] or a resolution has been passed for winding-up a Company voluntarily, such Company shall be wound up in the same manner and with the same incidents as if this Act were not passed; and, for the purposes of such winding-up, the Indian Companies Act, 1866,[a] shall be deemed to remain in full force.

X of 1866.

X of 1866.

Saving of conveyances.

**251.** Where, previously to the commencement of this Act, any conveyance, mortgage-deed or other instrument has been made in pursuance of the Indian Companies Act, 1866,[a] such instrument shall be of the same force as if this Act had not passed; and, for the purposes of such instrument, the Indian Companies Act, 1866,[a] shall be deemed to remain in full force.

X of 1866.

X of 1866.

Cognizance of offences.

**252.** All offences under this Act may be tried by any Magistrate of the first class, unless the period of imprisonment to which the offender is liable exceeds that which such officer is competent to award under the law for the time being in force[b] in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

Punishment of offences committed within Presidency-towns.

If any offence which by this Act is declared to be punishable by any penalty is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

Power to make orders as to costs.

**253.**[c] Subject to the provisions hereinbefore contained, the Court may, in any proceedings under this Act, make such order as to costs as it thinks fit.

Power of High Court to make rules.

**254.**[d] The High Court may from time to time make rules, consistent with this Act and with the Code of Civil Procedure,[e] concerning the mode of proceeding to be had for winding-up a Company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-division of the shares of the Company.

XIV of 1882.

Construction of "Registrar of Joint-

XXI of 1860.

**255.** In sections 1 and 18 of Act No. XXI of 1860 (*for the registration of Literary, Scientific and Charitable Societies*), the words "Registrar of Joint-

[a] Repealed by this Act—see section 2.
[b] See now Act X of 1882, section 32.
[c] Compare 30 & 31 Vic., cap. 131, section 45.
[d] Compare 30 & 31 Vic., cap. 131, section 20.
[e] See Act XIV of 1882, section 3.

Stock Companies" in Act XXI of 1860.

Stock Companies" shall be construed to mean Registrar of Joint-Stock Companies under this Act or any Act for the time being in force.

Act not to apply to Bank of Bengal, Madras or Bombay.

**256.** Save as provided in sections 152 and 153, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

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## FIRST SCHEDULE.

### TABLE A.

### REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

*Shares.*

(1) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2) Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

(3) If such certificate is worn out or lost, it may be renewed, on payment of eight annas or such less sum as the Company in general meeting may prescribe.

*Calls on Shares.*

(4) The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed.

(6) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7) The directors may, if they think fit, receive, from any member willing to advance the same, all or any part of the moneys due upon the shares held by him beyond the sums actually called for; and, upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

*Transfers of Shares.*

(8) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register-book in respect thereof.

(9) Shares in the Company shall be transferred in the following form:—

I, *A B*, of , in consideration of the sum of rupees paid to me by *C D* of , do hereby transfer to the said *C D* the share (*or* shares) numbered standing in my name in the books of the Company, to hold unto the said *C D*, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said *C D*, do hereby agree to take the said share (*or* shares) subject to the same conditions. As witness our hands the day of

(10) The Company may decline to register any transfer of shares made by a member who is indebted to them.

(11) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

*Transmission of Shares.*

(12) The executors or administrators of a deceased member shall be the only persons recognized by the Company as having any title to his share.

(13) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may, from time to time, be required by the Company.

(14) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to

have some person to be named by him registered as a transferee of such share.

(15) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16) The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

*Forfeiture of Shares.*

(17) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

(18) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20) Any share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company in general meeting thinks fit.

(21) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22) A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made and that the forfeiture of the share was made

by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

*Conversion of Shares into Stock.*

(23) The directors may, with the sanction of the Company previously given in general meeting, convert any paid up shares into stock.

(24) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

(25) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for the purpose of voting at meetings of the Company and for other purposes as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

*Increase in Capital.*

(26) The directors may, with the sanction of a special resolution of the Company previously given in general meeting, increase its capital by the issue of new shares; such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such

offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

(28) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

*General Meetings.*

(29) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place, as the directors may determine.

(30) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the Company, convene an extraordinary general meeting.

(33) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(34) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

*Proceedings at General Meeting.*

(35) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of such

business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(37) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say:—If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall [a] added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

(38) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die.*

(39) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

(40) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be

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[a] Insert 'be'.

sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favor of or against such resolution.

(43) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

*Votes of Members.*

(44) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(46) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48) Votes may be given either personally or by proxy.

(49) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or, if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company.

(50) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51) Any instrument appointing a proxy shall be in the following form :—

*Company, Limited.*

I, , of , being a member of the Company, Limited, and entitled to vote (*or* *votes*), hereby appoint , of , as my proxy, to vote for me and on my behalf at the (ordinary *or* extraordinary, *as the case may be*) general meeting of the Company to be held on the day of , and at any adjournment thereof (*or* at any meeting of the Company that may be held in the year ). As witness my hand, this day of

Signed by the said in the presence of

*Directors.*

(52) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

*Powers of Directors.*

(55) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting; subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act and to such regulations, being not inconsistent with the aforesaid regulations, or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56) The continuing directors may act notwithstanding any vacancy in their body.

*Disqualification of Directors.*

(57) The office of director shall be vacated—

if he, or any partner of his, or the firm of which he is a member, holds any other office or place of profit under the Company ;

if he becomes bankrupt or insolvent;

if he is punished under any of the penal provisions of the foregoing Act;

if he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions:—that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with or done any work for the Company of which he is director; nevertheless, he shall not vote in respect of such contract or work, and if he does so vote, his vote shall not be counted.

*Rotation of Directors.*

(58) At the first ordinary meeting after the registration of the Company, the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

(60) A retiring director shall be re-eligible.

(61) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62) If, at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63) The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long

only as the vacating director would have retained the same if no vacancy had occurred.

(65) The Company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

*Proceedings of Directors.*

(66) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote.

(71) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

*Dividends.*

(72) The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73) No dividend shall be payable except out of the profits arising from the business of the Company.

(74) The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(76) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.

(77) No dividend shall bear interest as against the Company.

*Accounts.*

(78) The directors shall cause true accounts to be kept—

of the stock in trade of the Company;

of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place; and

of the credits and liabilities of the Company.

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meeting, shall be open to the inspection of the members during the hours of business.

(79) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distin-

guishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and, in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81) A balance-sheet shall be made out in every year and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

*Audit.*

(83) Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(84) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the Company in general meeting.

(85) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86) The auditors may be members of the Company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

(87) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

(89) Any auditor shall be re-eligible on his quitting office.

(90) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91) If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

(92) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93) Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

(94) The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up to as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read together with the report of the directors, at the ordinary meeting.

*Notices.*

(95) A notice may be served by the Company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode.

(96) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

DR. *Balance-sheet*[a] *of the* *Company made up to* 18 . CR.

| | | Capital and Liabilities. | Rs. | As. | | | Property and Assets. | Rs. | As. |
|---|---|---|---|---|---|---|---|---|---|
| I. Capital. | | Showing— | | | III. Property held by the Company. | | Showing— | | |
| | 1 | The number of shares ... ... ... | | | | 7 | Immoveable property—distinguishing— ... | | |
| | 2 | The amount paid per share ... ... ... | | | | | (a) Freehold land ... ... ... | | |
| | 3 | If any arrears of calls, the nature of the arrear and the names of the defaulters ... ... | | | | | (b) ,, buildings ... ... ... | | |
| | 4 | The particulars of any forfeited shares ... | | | | | (c) Leasehold ... ... ... | | |
| | | | | | | 8 | Moveable property, distinguishing— ... | | |
| | | | | | | | (d) Stock-in-trade ... ... ... | | |
| | | | | | | | (e) Plant ... ... ... ... | | |
| | | | | | | | The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss. | | |
| II. Debts and Liabilities of the Company. | | Showing— | | | IV. Debts owing to the Company. | | Showing— | | |
| | 5 | The amount of loans on mortgages or debenture-bonds ... ... ... ... | | | | 9 | Debts considered good for which the Company hold bills or other securities ... ... | | |
| | 6 | The amount of debts owing by the Company—distinguishing— ... ... ... ... | | | | 10 | Debts considered good for which the Company hold no security ... ... ... | | |
| | | (a) Debts for which acceptances have been given | | | | 11 | Debts considered doubtful and bad ... ... | | |
| | | (b) Debts to tradesmen for supplies of stock in trade or other articles ... ... | | | | | Any debt due from a director or other officer of the Company to be separately stated. | | |
| | | (c) Debts for law expenses ... ... | | | | | | | |
| | | (d) Debts for interest on debentures or other loans ... ... ... ... | | | | | | | |
| | | (e) Unclaimed dividends ... ... ... | | | | | | | |
| | | (f) Debts not enumerated above ... ... | | | | | | | |
| VI. Reserve Fund. | | Showing— | | | V. Cash and Investments. | | Showing— | | |
| | | The amount set aside from profits to meet contingencies ... ... ... ... | | | | 12 | The nature of investment and rate of interest ... | | |
| | | | | | | 13 | The amount of cash, where lodged, and if bearing interest ... ... ... ... | | |
| VII. Profit and Loss. | | Showing— | | | | | | | |
| | | The disposable balance for payment of dividends, &c. | | | | | | | |
| Contingent Liabilities. | | Claims against the Company not acknowledged as debts ... ... ... ... | | | | | | | |
| | | Moneys for which the Company is contingently liable ... ... ... ... ... | | | | | | | |

[a] See clauses 81 and 82 of the foregoing Table A,—*supra*, page 185.

## TABLE B.

TABLE OF FEES to be paid to the Registrar of Joint-Stock Companies by a Company having a capital divided into shares.

| | Rs. | A. | P. |
|---|---|---|---|
| For registration of a Company whose nominal capital does not exceed Rs. 20,000, a fee of . . . . . | 40 | 0 | 0 |
| For registration of a Company whose nominal capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say);— | | | |
| For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 20,000 rupees, up to 50,000 rupees . . . | 20 | 0 | 0 |
| For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 50,000 rupees, up to 10,00,000 rupees . . . | 5 | 0 | 0 |
| For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 10,00,000 rupees . . . . . | 1 | 0 | 0 |
| For registration of any increase of capital made after the first registration of the Company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased capital had formed part of the original capital at the time of registration. | | | |
| Provided that no Company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration. | | | |
| For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company. | | | |
| For registering any document hereby required or authorized to be registered, other than the memorandum of association . . . . . | 5 | 0 | 0 |
| For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of . . . . . | 5 | 0 | 0 |

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## TABLE C.

TABLE OF FEES to be paid to the Registrar of Joint-Stock Companies by a Company not having a capital divided into shares :—

| | Rs. | A. | P. |
|---|---|---|---|
| For registration of a Company whose number of members, as stated in the articles of association, does not exceed 20 . . . . . | 40 | 0 | 0 |
| For registration of a Company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 . . . | 100 | 0 | 0 |
| For registration of a Company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the | | | |

(*First Schedule.—Form D: Form of Statement referred to in Part III of the Act.*)

TABLE C—*contd.*

| | Rs. | A. | P. |
|---|---|---|---|
| above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100. | | | |
| For registration of a Company in which the number of members is stated in the articles of association to be unlimited, a fee of . . . . | 400 | 0 | 0 |
| For registration of any increase on the number of members made after the registration of the Company, in respect of every 50 members, or less than 50 members, of such increase . . . . . | 5 | 0 | 0 |
| Provided that no one Company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company. | | | |
| For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company. | | | |
| For registering any document hereby required or authorized to be registered, other than the memorandum of association . . . . | 5 | 0 | 0 |
| For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of . . . . . | 5 | 0 | 0 |

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## FORM D.

### FORM OF STATEMENT REFERRED TO IN PART III OF THE ACT.

[a] The Capital of the Company is Rs. divided into shares of each.

The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The liabilities of the Company on the first day of January (*or* July) were :—

Debts owing to sundry persons by the Company :

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundís, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The assets of the Company on that day were :—

Government securities [*stating them*], Rs.

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[a] If the Company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

FORM D—*contd.*

Bills of exchange, hundís and promissory notes, Rs.
Cash at the bankers', Rs.
Other securities, Rs.

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## SECOND SCHEDULE.

(*See Section 95.*)

### FORM A.

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

*1st.*—The name of the Company is "The Company, Limited."

*2nd.*—The registered office of the Company will be situate in .

*3rd.*—The objects for which the Company is established are " and the doing all such other things as are incidental or conducive to the attainment of the above objects."

*4th.*—The liability of the members is limited.

*5th.*—The capital of the Company is Rs. divided into shares of Rs. each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names :—

| Names, addresses and descriptions of subscribers. | Number of shares taken by each subscriber. |
|---|---|
| 1. *A.* *B.* of . . . . . | |
| 2. *C.* *D.* " . . . . . | |
| 3. *E.* *F.* " . . . . . | |
| 4. *G.* *H.* " . . . . . | |
| 5. *I.* *J.* " . . . . . | |
| 6. *K.* *L.* " . . . . . | |
| 7. *M.* *N.* " . . . . . | |
| Total shares taken . | |

*Dated the* *day of*

Witness to the above signatures.

*O. P.* of

(*Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares.*)

## FORM B.

### MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A CAPITAL DIVIDED INTO SHARES.

*Memorandum of Association.*

*1st.*—The name of the Company is "The Mutual Calcutta Marine Association, Limited."

*2nd.*—The registered office of the Company will be situate in Calcutta.

*3rd.*—The objects for which the Company is established are "the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

*4th.*—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 100.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers.*

1. *A. B.* of
2. *C. D.* „
3. *E. F.* „
4. *G. H.* „
5. *I. J.* „
6. *K. L.* „
7. *M. N.* „

*Dated the* *day of*

Witness to the above signatures.

*O. P.* of

(*Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares.*)

*Articles of Association to accompany preceding Memorandum of Association.*

(1) The Company, for the purpose of registration, is declared to consist of five hundred members.

(2) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

*Definition of Members.*

(3) Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

*General Meetings.*

(4) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place as the directors may determine.

(5) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.

(6) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

*Proceedings at General Meetings.*

(10) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in

(*Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares.*)

*Articles of Association,*—contd.

general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(12) No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of members is present at the commencement of such business. Such quorum shall be ascertained as follows, that is to say: if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty; with this limitation, that no quorum shall in any case exceed thirty.

(13) If, within one hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same time and place; and, if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die.*

(14) The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

(15) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

(16) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18) If a poll is demanded in manner aforesaid, the same shall be taken in

*Articles of Association,*—contd.

such 1manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

*Votes of Members.*

(19) Every member shall have one vote and no more.

(20) If any member is a lunatic or idiot, he may vote by his committee or other legal curator: if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(21) No member shall be entitled to vote at any meeting unless all moneys due from him to the Company have been paid.

(22) Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

(23) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24) Any instrument appointing a proxy shall be in the following form:—

*Company, Limited.*

I, , of , being a member of the Company, Limited, hereby appoint , of , as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the Company to be held on the day of , and at any adjournment thereof [*or* at any meeting of the Company that may be held in the year ].

As witness my hand, this day of . Signed by the said in the presence of

*Directors.*

(25) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(26) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

*Powers of Directors.*

(27) The business of the Company shall be managed by the directors,

(*Second Schedule.—Form B: Memorandum and Articles of Association of a Company limited by guarantee, and not having a Capital divided into Shares.*)

*Articles of Association,*—contd.

who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

*Election of Directors.*

(28) The directors shall be elected annually by the Company in general meeting.

*Business of Company.*

(*Here insert rules as to mode in which business of insurance is to be conducted.*)

*Accounts.*

(29) The accounts of the Company shall be audited by a committee of five members, to be called the audit-committee.

(30) The first audit-committee shall be nominated by the directors out of the body of members.

(31) Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

(32) The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33) The audit-committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company.

They may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the Company.

(34) The audit-committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the

(*Second Schedule.—Form C: Memorandum and Articles of Association of a Company limited by guarantee, and having a Capital divided into Shares.*)

*Articles of Association,*—concld.

directors, and whether they or it have or has been satisfactory; and such report shall be read together with the report of the directors at the ordinary meeting.

*Notices.*

(35) A notice may be served by the Company upon any member either personally, or by sending it through the post in a letter addressed to such member at his registered place of abode.

(36) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

*Winding-up.*

(37) The Company shall be wound up voluntarily whenever an extraordinary resolution, as defined by the Indian Companies Act, 1882, is passed, requiring the Company to be wound up voluntarily.

*Names, Addresses and Descriptions of Subscribers.*

1. *A. B.* of . . . . . Merchant.
2. *C. D.* „ . . . . . „
3. *E. F.* „ . . . . . „
4. *G. H.* „ . . . . . „
5. *I. J.* „ . . . . . „
6. *K. L.* „ . . . . . .
7. *M. N.* „ . . . . . ,

*Dated the* *day of* 18 .

Witness to the above signatures.

*O. P.* of .

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FORM C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A CAPITAL DIVIDED INTO SHARES.

*Memorandum of Association.*

*1st.*—The name of the Company is "The Hotel Company, Limited."

*2nd.*—The registered office of the Company will be situate in

(*Second Schedule.—Form C: Memorandum and Articles of Association of a Company limited by guarantee, and having a Capital divided into Shares.*)

*Memorandum of Association,*—contd.

*3rd.*—The objects for which the Company is established are "the facilitating travelling in by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

*4th.*—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

*Names, Addresses and Descriptions of Subscribers.*

1. *A. B.* of
2. *C. D.* „
3. *E. F.* „
4. *G. H.* „
5. *I. J.* „
6. *K. L.* „
7. *M. N.* „

*Dated the day of 18 .*

Witness to the above signatures.

*O. P.* of .

*Articles of Association to accompany preceding Memorandum of Association.*

(1) The capital of the Company shall consist of five lákhs of rupees divided into five thousand shares of one hundred rupees each.

(2) The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

(3) The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

(*Second Schedule.—Form D: Memorandum and Articles of Association of an unlimited Company having a Capital divided into Shares.*)

*Articles of Association,*—contd.

(4) All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

| Names, addresses and descriptions of subscribers. | Number of shares taken by each subscriber. |
|---|---|
| 1. *A. B.* of<br>2. *C. D.* „<br>3. *E. F.* „<br>4. *G. H.* „<br>5. *I. J.* „<br>6. *K. L.* „<br>7. *M. N.* „ | |

Total shares taken

*Dated the day of 18 .*

Witness to the above signatures.

*O. P.* of

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FORM D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A CAPITAL DIVIDED INTO SHARES.

*Memorandum of Association.*

*1st.*—The name of the Company is "The Patent Company."

*2nd.*—The registered office of the Company will be situate in

*3rd.*—The objects for which the Company is established are "the working of a patent method of , of which method *O. P.* of is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a Company in pursuance of this Memorandum of Association.

(*Second Schedule.—Form D: Memorandum and Articles of Association of an unlimited Company having a Capital divided into Shares.*)

*Memorandum of Association,*—contd.

*Names, Addresses and Descriptions of Subscribers.*

1. *A. B.* of
2. *C. D.* „
3. *E. F.* „
4. *G. H.* „
5. *I. J.* „
6. *K. L.* „
7. *M. N.* „

*Dated the* *day of* *18* .

Witness to the above signatures.

*Q. R.* of .

*Articles of Association to accompany the preceding Memorandum of Association.*

*Capital of the Company.*

The capital of the Company is twenty thousand rupees divided into twenty shares of one thousand rupees each.

*Application of Table A.*

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

| Names, addresses and descriptions of subscribers. | Number of shares taken by subscribers. |
|---|---|
| 1. *A. B.* of<br>2. *C. D.* „<br>3. *E. F.* „<br>4. *G. H.* „<br>5. *I. J.* „<br>6. *K. L.* „<br>7. *M. N.* „ | |

Total shares taken

*Dated the* *day of* *18* .

Witness to the above signatures.

*Q. R.* of

FORM E.

*As required by the second Part of the foregoing Act.*

Summary of capital and shares of the Company, made up to the day of .

Nominal capital, Rs. , divided into shares of Rs. each.

Number of shares taken up to the day of

There has been called up on each share, Rs.

Total amount of calls received, Rs.

Total amount of calls unpaid, Rs.

List of persons holding shares in the Company on the day of and of persons who have held shares therein at any time during the year immediately preceding the said day of showing their names and addresses and an account of the shares so held.

(Second Schedule.—Form E.)

| Folio in register ledger containing particulars. | Names, Addresses and Occupations. | | | | Account of Shares. | | | | | Remarks. |
|---|---|---|---|---|---|---|---|---|---|---|
| | Surname. | Christian name. | Address. | Occupation. | Shares held by existing members on the day of . | Additional shares held by existing members during preceding year | | Shares held by persons no longer members. | | |
| | | | | | | Number. | Date of transfer. | Number. | Date of transfer. | |

## APPENDIX TO ACT VI OF 1882 [see section 2, clause (c), of the Act].

### TABLE B IN THE SCHEDULE ANNEXED TO ACT XIX OF 1857.

### REGULATIONS FOR MANAGEMENT OF THE COMPANY.

*Shares.*

1. No person shall be deemed to have accepted any share in the Company, unless he has testified his acceptance thereof by writing under his hand in such form as the Company from time to time directs.

2. The Company may from time to time make such calls upon the shareholders, in respect of all moneys unpaid on their shares, as they think fit, provided that twenty-one days' notice at least is given of each call; and each shareholder shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the Company.

3. A call shall be deemed to have been made at the time when the resolution authorizing such call was passed.

4. If, before or on the day appointed for payment, any shareholder does not pay the amount of any call to which he is liable, then such shareholder shall be liable to pay interest for the same at the rate of 5 per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

5. The Company may, if they think fit, receive, from any of the shareholders willing to advance the same, all or any part of the moneys due upon their respective shares beyond the sums actually called for; and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the shareholder paying such sum in advance and the Company agree upon.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

7. The Company may decline to register any transfer of shares made by a shareholder who is indebted to them.

8. Every shareholder shall, on payment of such sum not exceeding eight annas as the Company may prescribe, be entitled to a certificate, under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

9. If such certificate is worn out or lost, it may be renewed, on payment of such sum, not exceeding eight annas, as the Company may prescribe.

10. The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

*Transmission of Shares.*

11. The executors or administrators or representatives of a deceased shareholder shall be the only persons recognized by the Company as having any title to his share.

12. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any shareholder, or in consequence of the marriage of any female shareholder or in any way other than by transfer, may be registered as shareholder upon such evidence being produced as may from time to time be required by the Company.

13. Any person who has become entitled to a share in any way other than by transfer may, instead of being registered himself, elect to have some person to be named by him registered as a holder of such share.

14. The person so becoming entitled shall testify such election by execution to his nominee a transfer of such share.

15. The instrument of transfer shall be presented to the Company accompanied with such evidence as they may require to prove the title of the transferor, and thereupon the Company shall register the transferee as a shareholder.

*Forfeiture of Shares.*

16. If any shareholder fails to pay any call due on the appointed day, the Company may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him, requiring him to pay such call, together with any interest that may have accrued by reason of such non-payment.

17. The notice shall name a further date, and a place or places, being a place or places at which calls of the Company are usually made payable, on and at which such call is to be paid: it shall also state that, in the event of non-payment at the time and place appointed, the shares in respect of which such call was made will be liable to be forfeited.

18. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may be forfeited by a resolution of the directors to that effect.

19. Any shares so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company thinks fit.

20. Any shareholder whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

*Increase in Capital.*

21. The Company may, with the sanction of the Company previously given in general meeting, increase its capital.

22. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions in all respects, whether with reference to the payment of calls, or the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

*General Meetings.*

23. The first general meeting shall be held at such time, not being more than twelve months after the incorporation of the Company, and at such place, as the directors may determine.

24. Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

25. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

26. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any number of shareholders holding in the aggregate not less than one-fifth part of the shares of the Company, convene an extraordinary general meeting.

27. Any requisition so made by the shareholders shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

28. Upon the receipt of such requisition, the director[a] shall forthwith proceed to convene a general meeting: if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other shareholders holding the required number of shares, may themselves convene a meeting.

29. Seven days' notice at the least, specifying the place, the time, the

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[a] *Sic.* Read 'directors'.

hour of meeting, and the purpose for which any general meeting is to be held, shall be given by advertisement, or in such other manner (if any) as may be prescribed by the Company.

30. Any shareholder may, on giving not less than three days' previous notice, submit any resolution to a meeting beyond the matters contained in the notice given of such meeting.

31. The notice required of a shareholder shall be given by leaving a copy of the resolution at the registered office of the Company.

32. No business shall be transacted at any meeting, except the declaration of a dividend, unless a quorum of shareholders is present at the commencement of such business; and such quorum shall be ascertained as follows (that is to say): if the shareholders belonging to the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional shareholders up to fifty, and one for every ten additional shareholders after fifty, with this limitation, that it shall not be necessary for any quorum in any case to exceed forty.

33. If within one hour from the time appointed for the meeting the required number of shareholders is not present, the meeting, if convened upon the requisition of the shareholders, shall be dissolved: in any other case it shall stand adjourned to the following day at the same time and place; and if at such adjourned meeting the required number of shareholders is not present, it shall be adjourned *sine die*.

34. The chairman (if any) of the Board of Directors shall preside as chairman at every meeting of the Company.

35. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the shareholders present shall choose some one of their number to be chairman of such meeting.

36. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

37. At any general meeting, unless a poll is demanded by at least five shareholders, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

38. If a poll is demanded in manner aforesaid, the same shall be taken in

such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

*Votes of Shareholders.*

39. Every shareholder shall have one vote for every share up to ten; he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares held by him beyond the first hundred shares.

40. If any shareholder is a lunatic or idiot, he may vote by his committee; and if any shareholder is a minor, he may vote by his guardian, or any one of his guardians if more than one.

41. If more persons than one are jointly entitled to a share or shares, the person whose name stands first in the register of shareholders as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

42. No shareholder shall be entitled to vote at any meeting unless all calls due from him have been paid, nor until he shall have been possessed of his shares three calendar months, unless such shares shall have been acquired or shall have come by bequest, or by marriage, or by succession to an intestate's estate, or by any deed of settlement after the death of any person who shall have been entitled for life to the dividends of such shares.

43. Votes may be given either personally or by proxies; a proxy shall be appointed in writing under the hand of the appointer, or, if such appointor is a corporation, under their common seal.

44. No person shall be appointed a proxy who is not a shareholder, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of one month from the date of its execution.

*Directors.*

45. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the Memorandum of Association.

46. Until directors are appointed, the subscribers of the Memorandum of Association shall for all the purposes of this Act be deemed to be directors.

*Powers of Directors.*

47. The business of the Company shall be managed by the directors, who

may exercise all such powers of the Company as are not by this Act or by the Articles of Association (if any) declared to be exercisable by the Company in general meeting, subject nevertheless to any regulations of the Articles of Association, to the provisions of this Act, and to such regulations, not being inconsistent with the aforesaid regulations or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

*Disqualification of Directors.*

48. The office of director shall be vacated—

if he holds any other office or place of profit under the Company;

if he becomes bankrupt or insolvent;

if he is concerned in or participates in the profits of any contract with the Company;

if he participates in the profits of any work done for the Company:

But the above rules shall be subject to the following exceptions:—that no director shall vacate his office by reason of his being a shareholder in any incorporated Company which has entered into contracts with or done any work for the Company of which he is director; nevertheless he shall not vote in respect of such contract or work; and if he does so vote, his vote shall not be counted, and he shall incur a penalty not exceeding five hundred rupees.

*Rotation of Directors.*

49. At the first ordinary meeting after the incorporation of the Company, the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

50. The one-third or other nearest number to retire during the first and second years ensuing the incorporation of the Company shall, unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

51. A retiring director shall be re-eligible.

52. The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

53. If at any meeting at which an election of directors ought to take place no such election is made, the meeting shall stand adjourned till the next day, at the same time and place ; and if at such adjourned meeting no election takes place, the former directors shall continue to act until new directors are appointed at the first ordinary meeting of the following year.

54. The Company may, from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

55. Any casual vacancy occurring in the Board of Directors may be filled up by the directors ; but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

*Proceedings of Directors.*

56. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business : questions arising at any meeting shall be decided by a majority of votes : in case of an equality of votes, the chairman, in addition to his original vote, shall have a casting vote : a director may at any time summon a meeting of the directors.

57. The directors may elect a chairman of their meetings and determine the period for which he is to hold office ; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

58. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit : any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

59. A committee may elect a chairman of their meetings : if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

60. A committee may meet and adjourn as they think proper : questions at any meeting shall be determined by a majority of votes of the members present ; and in case of an equal division of votes, the chairman shall have a casting vote.

61. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that

it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

62. The directors shall cause minutes to be made, in books provided for the purpose,—

(1) of all appointments of officers made by the directors ;

(2) of the names of the directors present at each meeting of directors and committees of directors ;

(3) of all orders made by the directors and committees of directors ; and

(4) of all resolutions and proceedings of meetings of the Company, and of the directors and committees of directors.

And any such minute as aforesaid, if signed by any person purporting to be the chairman of any meeting of directors, or committee of directors, shall be receivable in evidence without any further proof.

63. The Company, in general meeting, may, by a special resolution, remove any director before the expiration of his period of office, and appoint another qualified person in his stead : the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

*Dividends.*

64. The directors may, with the sanction of the Company in general meeting, declare a dividend to be paid to the shareholders in proportion to their shares.

65. The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company, or any part thereof ; and the directors may invest the sum so set apart as a reserved fund upon such securities as they, with the sanction of the Company, may select.

66. The directors may deduct from the dividends payable to any shareholder all such sums of money as may be due from him to the Company on account of calls or otherwise.

67. Notice of any dividend that may have been declared shall be given to each shareholder, or sent by post or otherwise to his registered place of abode ; and all dividends unclaimed for three years, after having been declared, may be forfeited by the directors for the benefit of the Company.

68. No dividend shall bear interest as against the Company.

*Accounts.*

69. Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

70. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

71. A balance-sheet shall be made out in every year, and laid before the general meeting of the Company; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

72. A printed copy of such balance-sheet shall, seven days previously to such meeting, be delivered at or sent by post to the registered address of every shareholder.

*Audit.*

73. The accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors to be elected by the Company in general meeting.

74. If not more than one auditor is appointed, all the provisions herein contained relating to auditors shall apply to him.

75. The auditors need not be shareholders in the Company: no person is eligible as an auditor who is interested otherwise than as a shareholder in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

76. The election of auditors shall be made by the Company at their ordinary meeting, or, if there are more than one, at their first ordinary meeting in each year.

77. The remuneration of the auditors shall be fixed by the Company at the time of their election.

78. Any auditor shall be re-eligible on his quitting office.

79. If any casual vacancy occurs in the office of auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

80. If no election of auditors is made in manner aforesaid, the Local Government may, on the application of one-fifth in number of the shareholders of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

81. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

82. Every auditor shall have a list delivered to him of all books kept by the Company, and he shall at all reasonable times have access to the books and accounts of the Company; he may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the Company.

83. The auditors shall make a report to the shareholders upon the balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs; and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

## Notices.

84. Notices requiring to be served by the Company upon the shareholders may be served either personally, or by leaving the same, or sending them through the post in a letter addressed to the shareholders, at their registered places of abode.

85. All notices directed to be given to the shareholders shall, with respect to any share to which persons are jointly entitled, be given to whichever of the said persons is named first in the register of shareholders; and notice so given shall be sufficient notice to all the proprietors of such share.

## FORM OF BALANCE-SHEET REFERRED TO IN TABLE B.

*Dr.* *Balance-sheet*[a] *of the* *Company made up to* 18 . *Cr.*

| CAPITAL AND LIABILITIES. | | | Rs. A. P. | Rs. A. P. |
|---|---|---|---|---|
| I. CAPITAL ... | 1 | Showing— The total amount received from the shareholders; showing also ... (a) The number of shares ... (b) The amount paid per share ... (c) If any arrears of calls, the nature of the arrear and the names of the defaulters. (Any arrears due from any director or officer of the Company to be separately stated.) (d) The particulars of any forfeited shares. | | |
| II. DEBTS AND LIABILITIES of the Company ... | 2 | Showing— The amount of loans on mortgage or debenture bonds ... ... | | |
| | 3 | The amount of debts owing by the Company, distinguishing— (a) Debts for which acceptances have been given. (b) Debts to tradesmen for supplies of stock-in-trade or other articles. (c) Debts of law expenses. (d) Debts for interest on debentures or other loans. (e) Unclaimed dividends. (f) Debts not enumerated above. | | |
| VI. RESERVE FUND | | Showing— The amount set aside from profits to meet contingencies. | | |
| VII. PROFIT AND LOSS ... | ... | Showing— The disposable balance for payment of dividend, &c. | | |
| CONTINGENT LIABILITIES ... | ... | Claims against the Company not acknowledged as debts. Moneys for which the Company is contingently liable. | | |

| PROPERTY AND ASSETS. | | | Rs. A. P. | Rs. A. P. |
|---|---|---|---|---|
| III. PROPERTY held by the Company... | | Showing— | | |
| | 4 | Immoveable property, distinguishing— (a) Land (describing tenure) .. (b) Buildings. | | |
| | 5 | Moveable property, distinguishing— (c) Stock-in-Trade ... (d) Plant. (The cost to be stated with deduction for deterioration in value as charged to the Reserve Fund or Profit and Loss.) | | |
| IV. DEBTS owing to the Company... | | Showing— | | |
| | 6 | Debts considered good for which the Company hold bills or other securities. | | |
| | 7 | Debts considered good for which the Company hold no security. | | |
| | 8 | Debts considered doubtful and bad. (Any debt due from a director or other officer of the Company to be separately stated.) | | |
| V. CASH AND INVESTMENT ... | | Showing— | | |
| | 9 | The nature of investment and rate of interest. | | |
| | 10 | The amount of cash, where lodged, and if bearing interest. | | |

[a] See clauses 71 and 72 of the foregoing Table B, *supra*, page 210.

## ACT No. VII OF 1882.

*Received the Governor General's assent on the 24th February, 1882.*

## An Act to amend the law relating to Powers-of-Attorney.

FOR the purpose of amending the law relating to Powers-of-Attorney; it is hereby enacted as follows:— Preamble.

**1.** This Act may be called "The Powers-of-Attorney Act, 1882": Short title.

It applies to the whole of British India; Local extent.

and it shall come into force on the first day of May, 1882. Commencement.

**2.** The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof. Execution under power-of-attorney.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

**3.** Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same. Payment by attorney under power, without notice of death, &c., good.

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

**4.** (*a*) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration, or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be. Deposit of original instruments creating powers-of-attorney.

(*b*) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(*c*) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(*d*) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

(*e*) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (*a*), (*b*) and (*c*).

(*f*) Throughout British Burma, the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the High Court.

(*g*) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an authority on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

Act XXVIII of 1866, section 39, repealed.

6. The Trustees and Mortgagees Powers Act, 1866, section 39, is hereby repealed. XXVIII of 1866.

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## ACT No. VIII OF 1882.

*Received the Governor General's assent on the 2nd March, 1882.*

## An Act to amend the Indian Penal Code.

Preamble.

FOR the purpose of amending the Indian Penal Code; it is hereby enacted as follows:— XLV of 1860.

Amendment of section 40, clause 2, of Indian Penal Code.

1. In the second clause of section 40 of the said Code, before the figures "109", the figures "64, 65, 66, 71" shall be inserted.

Amendment of section 64 of same Code.

2. In section 64 of the said Code, for the first twelve words, the following shall be substituted, namely:—

"In every case of an offence punishable with imprisonment as well as fine,

in which the offender is sentenced to a fine, whether with or without imprisonment,

"and in every case of an offence punishable with fine only, in which the offender is sentenced to a fine."

**3.** In section 67, after the words "fine only," the words "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" shall be inserted. Amendment of section 67 of same Code.

**4.** To section 71 of the said Code, the following clause shall be added:— Addition to section 71 of same Code.

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

**5.** In section 73 of the said Code, for the words "be less than a" the words "shall not exceed one" shall be substituted. Am[illegible] of s[illegible] of s[illegible]

**6.** In section 214 of the said Code, for the Exception, the following shall be substituted, namely:— New [illegible] tion [illegible] 214 of same Code.

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

**7.** In section 309 of the said Code, for the last seven words the words "or with fine or with both" shall be substituted. Amendment of section 309 of same Code.

**8.** In section 335 of the said Code, before the word "causes" the word "voluntarily" shall be inserted. Amendment of section 335 of same Code.

**9.** In section 410 of the said Code, after the words "designated as 'stolen property'" the following words shall be inserted, namely:—"whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India;" and the words "offence of" shall be omitted. Amendment of section 410 of same Code.

**10.** In section 435 of the said Code, after the words "or upwards" the following words shall be inserted, namely:— Addition to section 435 of same Code.

"or (where the property is agricultural produce) ten rupees or upwards."

**11.** This Act extends to the whole of British India; and shall come into force on the first day of January, 1883. Local extent. Commencement.

## ACT No. IX OF 1882.

*Received the Governor General's assent on the 2nd March, 1882.*

## An Act to amend the Prisoners' Act, 1871.

Preamble.

WHEREAS it is expedient to amend Act No. V of 1871 (*to consolidate the laws relating to Prisoners confined by order of a Court*); It is hereby enacted as follows:— V of 1871.

Short title.

Local extent.

Commencement.

1. This Act may be called "The Prisoners' Act Amendment Act, 1882": it extends to the whole of British India; and it shall come into force on the first day of January, 1883.

Section substituted for section 33, Act V of 1871.

2. For section 33 of the said Act the following shall be substituted, namely:—

Governor General in Council to appoint places to which persons sentenced to transportation shall be sent.

Local Government to direct removal of such persons to places appointed.

"33. The Governor General in Council may, from time to time, appoint places within British India to which persons sentenced to transportation shall be sent: and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence."

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## THE CODE OF CRIMINAL PROCEDURE, 1882.

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558. Pending cases.

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SCHEDULE I.—Enactments repealed.
SCHEDULE II.—Tabular Statement of offences.
SCHEDULE III.—Ordinary powers of Provincial Magistrates.
SCHEDULE IV.—Additional powers with which Provincial Magistrates may be invested.
SCHEDULE V.—Forms.

ACT No. X OF 1882.

*Received the Governor General's assent on the 6th March, 1882.*

# An Act to consolidate and amend the law relating to Criminal Procedure.[a,b]

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:— Preamble.

# PART I.

## PRELIMINARY.

## CHAPTER I.

1. This Act may be called "The Code of Criminal Procedure, 1882"; and shall come into force on the first day of January, 1883; Short title. Commencement.

It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law now in force,[c] or shall apply to— Local extent.

(*a*) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;[d]

(*b*) any officer duly authorised to try petty offences in military bázárs at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively;[e]

(*c*) heads of villages in the Presidency of Fort St. George;[f] or

(*d*) village Police-officers in the Presidency of Bombay:[g]

(*e*) and nothing in sections 174, 175 and 176 shall apply to the police in the town of Madras.

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[a] Amended by Act III of 1884, which came into force on 1st May, 1884 (see section 15). References to the Code are to be read as if made to it as amended by that Act—see Act III of 1884, section 14 (2).

[b] The Act has been amended in its application to the Andaman and Nicobar Islands—see Regulation III of 1876, section 13, as amended by Regulation I of 1884, section 3.

[c] *e. g.*, Act V of 1869.

[d] As to Calcutta, see Bengal Act IV of 1866: Madras, see Madras Act VIII of 1867: Bombay, see Act XIII of 1856, Act XLVIII of 1860, and Bombay Act IV of 1882.

[e] See Madras Act I of 1866 and Bombay Act III of 1867.

[f] See Madras Regulations XI of 1816 and IV of 1821, section 6.

[g] See Bombay Act VIII of 1867, sections 14, 15 and 16.

Repeal of enactments.

2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Notifications, &c., under repealed Acts.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the 1st day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

References to Code of Criminal Procedure and other repealed enactments.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section. XXV of 1861. X of 1872.

Expressions in former Acts.

In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate", "Subordinate Magistrate, first class", and "Subordinate Magistrate, second class", shall respectively be deemed to mean "Magistrate of the first class", "Magistrate of the second class", and "Magistrate of the third class"; the expression "Magistrate of a division of a district" shall be deemed to mean "Sub-divisional Magistrate"; the expression "Magistrate of the district" shall be deemed to mean "District Magistrate", and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

Interpretation-clause.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

"Complaint":

(*a*) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a Police-officer:

"Investigation":

(*b*) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or Police-officer) who is authorized by a Magistrate in this behalf:

(*c*) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court: "Inquiry":

(*d*) "Judicial proceeding"[a] means any proceeding in the course of which evidence is or may be legally taken: "Judicial proceeding"

(*e*) "Writing" and "written" include "printing", "lithography", "photography", "engraving", and every other mode in which words or figures can be expressed on paper or on any substance: "Writing" and "written":

(*f*) "Sub-division" means a sub-division made under this Code[b] of a District: "Sub-division":

(*g*) "Province" means the territories for the time being under the administration of any Local Government: "Province":

(*h*) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay: "Presidency-town":

(*i*) "High Court"[c] means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects,[d] the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjáb and the Recorder of Rangoon: "High Court":

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area; or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf:

(*j*) "Chief Justice" includes also the senior Judge of a Chief Court: "Chief Justice":

(*k*) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf: "Advocate General":

(*l*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown: "Clerk of the Crown":

(*m*) "Public Prosecutor" means any person appointed under section 492, "Public Prosecutor":

[a] Compare Act XLV of 1860, section 193.
[b] See section 8, *infra*.
[c] See another definition, *infra*, section 266.
[d] See Chapter XXIII, *infra*.

and includes any person acting under the directions of a Public Prosecutor, and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

"Pleader":

(*n*) "Pleader", used with reference to any proceeding in any Court, means a pleader authorised under any law[a] for the time being in force to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorised, and (2) any mukhtár or other person appointed with the permission of the Court to act in such proceeding:

"Police-station":

(*o*) "Police-station" means any post declared, generally or specially, by the Local Government to be a Police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf; and "Officer in charge of a Police-station" includes, when the officer in charge of the Police-station is absent therefrom or unable from illness to perform his duties, the Police-officer present at the Police-station who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other Police-officer so present:

"Officer in charge of a Police-station":

"Offence":

(*p*) "Offence" means any act or omission made punishable by any law for the time being in force:

"Cognizable offence": "Cognizable case":

(*q*) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:

"Non-cognizable offence": "Non-cognizable case":

"Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may not arrest without warrant:

"Bailable offence": "Non-bailable offence"

(*r*) "Bailable offence" means an offence shewn as bailable in the second schedule, or which is made bailable by any other law for the time being in force; "and non-bailable offence" means any other offence:

"Warrant-case":

(*s*) "Warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months:

"Summons-case":

(*t*) "Summons-case" means a case relating to an offence not so punishable:

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[a] See Acts I of 1846, XX of 1853, XVIII of 1879 and IX of 1884.

(*u*) "European British subject" means— "European British subject":

(1) any subject of Her Majesty born, naturalised or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grand-child of any such person by legitimate descent:

(*v*) "Chapter" means a chapter of this Code; and "Schedule" means a schedule hereto annexed: "Chapter": "Schedule":

(*w*) "Place" includes also a house, building, tent and vessel. "Place."

Words which refer to acts done extend also to illegal omissions; and Words referring to acts.

XLV of 1860. all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code. Words to have same meaning as in Penal Code.

XLV of 1860. **5.** All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences. Trial of offences under Penal Code. Trial of offences against other laws.

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# PART II.

## CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

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## CHAPTER II.

### OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

*A.—Classes of Criminal Courts.*

### *A.—Classes of Criminal Courts.*

**6.** Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:— Classes of Criminal Courts.

I.—Courts of Session:

II.—Courts of Presidency Magistrates:

III.—Courts of Magistrates of the first class:

IV.—Courts of Magistrates of the second class:

V.—Courts of Magistrates of the third class.

*B.—Territorial Divisions.*

*B.—Territorial Divisions.*

Sessions Divisions:

**7.** Every Province (excluding the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions:

Districts.

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts.

Power to alter Divisions and Districts.

The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts.

Existing Divisions and Districts maintained till altered.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Presidency-towns to be deemed Districts.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

Power to divide Districts into Sub-divisions.

**8.** The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

Existing Sub-divisions maintained.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

*C.—Courts and Offices outside the Presidency-towns.*

*C.—Courts and Offices outside the Presidency-towns.*

Court of Session.

**9.** The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

District Magistrate.

**10.** In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

**11.** Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

*C.—Courts and Offices outside the Presidency towns.*

Subordinate Magistrates.

Local limits of their jurisdiction.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

Power to put Magistrate in charge of Sub-division.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

Such Magistrates shall be called Sub-divisional Magistrates.

Delegation of powers to District Magistrate.

The Local Government may delegate its powers under this section to the District Magistrate.

Special Magistrates.

14.[a] The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class, or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

Benches of Magistrates.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may

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[a] In Assam any Police-officer, not below the grade of Assistant District Superintendent, may be invested with all or any of the powers conferred or conferrible on a Magistrate of the first, second or third class in respect to non-cognizable cases—see Regulation II of 1883, section 4.

*C.—Courts and Offices outside the Presidency towns.*

by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

**Powers exercisable by Bench in absence of special direction.**

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

**Power to frame rules for guidance of Benches.**

**16.** The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects :—

(*a*) the classes of cases to be tried ;

(*b*) the times and places of sitting ;

(*c*) the constitution of the Bench for conducting trials ;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

**Subordination of Magistrates and Benches to District Magistrate ;**

**17.** All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches ; and

**to Sub-divisional Magistrate.**

every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

**Subordination of Assistant Sessions Judges to Sessions Judge.**

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

*D.—Courts of Presidency Magistrates.*

### *D.—Courts of Presidency Magistrates.*

Appointment of Presidency Magistrates:

**18.** The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

Local limits of their jurisdiction.

**19.** Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law[a] for the time being in force for the regulation of ports and port-dues.

XII of 1875.

Bombay Court of Petty Sessions.

**20.** Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law[b] in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

Chief Magistrate.

**21.** Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

*E.—Justices of the Peace.*

### *E.—Justices of the Peace.*

the Peace for the Mufassal.

**22.** The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

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[a] See Act XII of 1875.

[b] See Bombay Act IV of 1866, which was repealed by Act IV of 1877.

*E.—Justices of the Peace.*

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of the Peace for the Presidency-towns.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

Present Justices of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

*Ex officio* Justices of the Peace.

25.[a] In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India,[b] Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving,[b] and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

*F.—Suspension and Removal.*

*F.—Suspension and Removal.*

Suspension and removal of Judges and Magistrates.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government :

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[a] Compare 13 Geo. III, cap. 63, section 38.
[b-b] See Act III of 1884, section 1.

*F.—Suspension and Removal.*

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only shall not be suspended or removed from office by any other authority.

Suspension and removal of Justices of the Peace.

**27.** The Governor General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

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## CHAPTER III.

### POWERS OF COURTS.

*A.—Description of Offences cognizable by each Court.*

*A.—Description of Offences cognizable by each Court.*

Offences under Penal Code.

**28.** Subject to the other provisions of this Code,[a] any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.

XLV of 1860.

Offences under other laws.

**29.** Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: provided that—

(*a*) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

(*c*) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

Offences not punishable with death.

**30.** In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

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[a] *e. g.*, sections 193, 194.

*B.—Sentences which may be passed by Courts of various Classes.*

*B.—Sentences which may be passed by Courts of various classes.*

Sentences which High Courts and Sessions Judges may pass.

**31.** A High Court may pass any sentence authorised by law.

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.[a]

An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

Sentences which Magistrates may pass.

**32.** The Courts of Magistrates may pass the following sentences, namely :—

| | |
|---|---|
| (*a*) Courts of Presidency Magistrates and of Magistrates of the first class : | Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law ;[b]<br>Fine not exceeding one thousand rupees ;<br>Whipping.[c] |
| (*b*) Courts of Magistrates of the second class : | Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law ;[b]<br>Fine not exceeding two hundred rupees ;<br>Whipping.[c] |
| (*c*) Courts of Magistrates of the third class. | Imprisonment for a term not exceeding one month ;<br>Fine not exceeding fifty rupees. |

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

Power of

**33.** The Court of any Magistrate may award such term of imprisonment

[a] See section 374, *infra*.
[b] See Act XLV of 1860, sections 73 & 74.
[c] See Act VI of 1864.

*B.—Sentences which may be passed by Courts of various classes.*

in default of payment of fine as is authorised by law in case of such default :

Magistrates to sentence to imprisonment in default of fine.

Provided that the term is not in excess of the Magistrate's powers under this Code :

Proviso as to certain cases.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher powers of certain District Magistrates.

**34.** The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years,[a] including such solitary confinement as is authorised by law,[b] or of fine or of whipping,[c] or of any combination of these punishments authorised by law.

But any sentence of imprisonment for a term exceeding three years passed by any such Court shall be subject to the confirmation of the Sessions Judge.

Sentence in cases of conviction of several offences at one trial.

**35.** When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict ; such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :

Provided as follows :—

Maximum term of punishment.

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years :

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[a] See Act XLV of 1860, section 59.
[b] See Act XLV of 1860, sections 73 & 74.
[c] See Act VI of 1864.

*B.—Sentences which may be passed by Courts of various classes.*

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

*C.—Ordinary and Additional Powers.*

*C.—Ordinary and Additional Powers.*

Ordinary powers of Magistrates.

**36.** All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Additional powers conferrible on Magistrates.

**37.** In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Control of District Magistrate's investing power.

**38.** The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

*D.—Conferment, Continuance, and Cancellation of Powers.*

*D.—Conferment, Continuance, and Cancellation of Powers.*

Mode of conferring powers.

**39.** In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

Continuance of powers of officers transferred.

**40.** Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

Powers may be cancelled.

**41.** The Local Government may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

# PART III.

## GENERAL PROVISIONS.

## CHAPTER IV.

### OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

**Public when to assist Magistrates and Police.**

**42.** Every person is bound to assist a Magistrate or Police-officer reasonably demanding his aid, whether within or without the Presidency-towns,

(*a*) in the taking of any other person whom such Magistrate or Police-
s authorised to arrest;
vention of a breach of the peace, or of any injury attempted
mmitted to any railway, canal, telegraph or public property;

(*c*) in the suppression of a riot or an affray.

**Aid to person, other than Police-officer, executing warrant.**

**43.** When a warrant is directed to a person other than a Police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

**Public to give information of certain offences.**

**44.** Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely) 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

XLV of 1860.

**Village-headmen, landholders and others bound to report certain matters.**

**45.** Every village-headman, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or

vendor of stolen property in any village of which he is headman, watchman or Police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of, or intention to commit, any non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death or of any death under suspicious circumstances.

EXPLANATION.—In this section "village" includes village-lands.

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## CHAPTER V.

### OF ARREST, ESCAPE AND RETAKING.

*A.—Arrest generally.*

Arrest how made.

*A.—Arrest generally.*

46. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape, for a Police-officer, to enter such place and search therein, and

*A.—Arrest generally.*

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Breaking open zanána.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or Police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break open doors and windows for purposes of liberation.

**49.** Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint.

**50.** The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.[a]

Search of arrested persons.

**51.** Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the Police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.[b]

Mode of searching women.

**52.** Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Power to seize offensive weapons.

**53.** The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

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[a] For penalty, see Act V of 1861, section 29.

[b] As to disposal of such property, see section 523, *infra*.

### *B.—Arrest without Warrant.*

*B.—Arrest without Warrant.*

When police may arrest without warrant.

54. Any Police-officer may, without an order from a Magistrate and without a warrant, arrest—

*first*—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

*secondly*—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

*thirdly*—any person who has been proclaimed as an offender either under this Code or by order of the Local Government;

*fourthly*—any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

*fifthly*—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; and

*sixthly*—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.[a]

This section applies to the police in the towns of Calcutta and Bombay.

Arrest of vagabonds, habitual robbers, &c.

55. Any officer in charge of a Police-station may, in like manner, arrest or cause to be arrested—

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(*b*) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

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[a] For some other cases in which the police may arrest without warrant, see the "Index to the Enactments relating to India," 2nd Ed., pages 135 and 136; also the following Acts:—

Act XXI of 1883 (Emigration), section 82 (2).
Act XXII of 1883 (Rangoon Tramways), section 19.
Act IV of 1884 (Explosives), section 13.
Act XIII of 1884 (Municipalities, Panjáb), sections 76 and 78.
Act XVI of 1884 (Gaming, Burma), section 7.
Act XVII of 1884 (Municipalities, Burma), section 144.

*B.—Arrest without Warrant.*

(*c*) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

Procedure when Police-officer deputes subordinate to arrest without warrant.

**56.** When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

Refusal to give name and residence.

**57.** When any person in the presence of a Police-officer commits or is accused of committing a non-cognizable offence, and refuses on demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Pursuit of offenders into other jurisdictions.

**58.** A Police-officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest under this chapter, pursue such person into any place in British India.

Arrest by private persons.

**59.** Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;

Procedure on such arrest.

and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or, in the absence of a Police-officer, take such person to the nearest Police-station.

If there is reason to believe that such person comes under the provisions of section 54, a Police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

Person

**60.** A Police-officer making an arrest without warrant shall, without un-

arrested to be taken before Magistrate or officer in charge of Police-station.

*B.—Arrest without warrant.*

necessary delay and subject to the provisions herein contained as to bail,[a] take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

Person arrested not to be detained more than 24 hours.

**61.** No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Police to report apprehensions.

**62.** Officers in charge of Police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Discharge of person apprehended.

**63.** No person who has been arrested by a Police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Offence committed in Magistrate's presence.

**64.** When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail,[a] commit the offender to custody.

Arrest by or in presence of Magistrate.

**65.** Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Power, on escape, to pursue and retake.

**66.** If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

**67.** The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a Police-officer having authority to arrest.

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## CHAPTER VI.

### OF PROCESSES TO COMPEL APPEARANCE.

*A.—Summons.*

*A.—Summons.*

Form of summons.

**68.** Every summons[b] issued by a Court under this Code shall be in writing

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[a] See Chapter XXXIX, *infra*.

[b] See Schedule V, Forms I and XXXI, *infra*.

*A.—Summons.* in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Such summons shall be served by a Police-officer; or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it. Summons by whom served.

This section applies to the police in the towns of Calcutta and Bombay.

**69.** The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. Summons how served.

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate. Signature of receipt for summons.

**70.** Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate. Service when person summoned cannot be found.

**71.** If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served. Procedure when receipt cannot be obtained.

**72.** Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section. Service on servant of Government or of Railway Company.

**73.** When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served. Service of summons outside local limits.

**74.** When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be Proof of service in such cases, and

when serving officer not present.

made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

*A.—Summons.*

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

### *B.—Warrant of Arrest.*

*B.—Warrant of Arrest.*

Form of warrant of arrest.

**75.** Every warrant of arrest[a] issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Continuance of warrant of arrest.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Court may direct security to be taken.

**76.** Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

The endorsement[b] shall state—

(*a*) the number of sureties;

(*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

**77.** A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

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a, b See Schedule V, Form II, *infra*.

*B.—Warrant of Arrest.*

Warrant may be directed to landholders, &c.

**78.** A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

Warrant directed to Police-officer.

**79.** A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notification of substance of warrant.

**80.** The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Person arrested to be brought before Court without delay.

**81.** The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

**82.** A warrant of arrest may be executed at any place in British India.

Warrant forwarded to Magistrate for execution outside jurisdiction.

**83.** When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

Warrant directed to Police-officer for execution outside jurisdiction.

**84.** When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

*B.—Warrant of Arrest.*

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay.

Procedure on arrest of person against whom warrant issued.

**85.** When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Procedure by Magistrate before whom person arrested is brought.

**86.** Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security,[a] as the case may be, and forward the bond to the Court which issued the warrant.

Nothing in this section shall be deemed to prevent a Police-officer from taking security under section 76.

*C.—Proclamation and Attachment.*

*C.—Proclamation and Attachment.*

Proclamation for person absconding.

**87.** If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation[b] requiring him to appear at a

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[a] See Schedule V, Form III, *infra.*

[b] See Schedule V, Forms IV and V, *infra.*

*C.—Proclamation and Attachment.*

specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

**Attachment of property of person absconding.**

**88.** The Court may, after issuing a proclamation under section 87, order the attachment[a] of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district, when endorsed by the District Magistrate within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

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[a] See Schedule V, Form VI, *infra*.

*C.—Proclamation and Attachment.*

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf: or

(*h*) by all or any two of such methods, as the Court thinks fit.

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.[a] XIV of 1882.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Restoration of attached property.

**89.** If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under the last paragraph of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

*D.—Other rules regarding Processes.*

*D.—Other rules regarding Processes.*

Issue of warrant in lieu of, or in addition to, summons.

**90.** A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant[b] for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

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[a] See Act XIV of 1882, section 3.

[b] See Schedule V, Form VII, *infra*.

*(Part III.—General Provisions. Chapter VII.—Of Processes to compel the production of Documents and other Moveable Property, and for the Discovery of Persons wrongfully confined. Secs. 91-95.)*

*D.—Other rules regarding Processes.*

Power to take bond for appearance.

**91.** When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Arrest on breach of bond for appearance.

**92.** When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions in this chapter generally applicable to summonses and warrants of arrest.

**93.** The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

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## CHAPTER VII.

### OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

*A.—Summons to produce.*

### *A.—Summons to produce.*

Summons to produce document or other thing.

**94.** Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a Police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph authorities.

I of 1872.

Procedure as to letters and telegrams.

**95.** If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session,

wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

*A.—Summons to produce.*

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

*B.—Search-warrants.*

*B.—Search-warrants.*

When search-warrant may be issued.

**96.** Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, paragraph one, has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant;[a] and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Nothing herein contained shall authorise any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities.

Power to restrict warrant.

**97.** The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of house suspected to contain stolen property, forged documents, &c.

**98.** If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

[a] See Schedule V, Form VIII, *infra*.

*B.—Search-warrants.*

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

he may by his warrant[a] authorise any Police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

**Disposal of things found in search beyond jurisdiction.**

**99.** When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in

[a] See Schedule V, Form IX, *infra*.

which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court. *B.—Search-warrants.*

*C.—Discovery of persons wrongfully confined.*

*C.—Discovery of persons wrongfully confined.*

Search for persons wrongfully confined.

**100.** If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

*D.—General Provisions relating to searches.*

*D.—General Provisions relating to searches.*

Direction, &c., of search-warrants.

**101.** The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98 or section 100.

Persons in charge of closed place to allow search.

**102.** Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

Search to be made in presence of witnesses.

**103.** Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place search.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the

*D.—General Provisions relating to searches.*

list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

ed may attend.

*E.—Miscellaneous.*

*E.—Miscellaneous.*

**104.** Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.*

Power to impound document, &c., produced.

**105.** Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Magistrate may direct search in his presence.

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# PART IV.

## PREVENTION OF OFFENCES.

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## CHAPTER VIII.

### Of Security for keeping the Peace and for Good Behaviour.

*A.—Security for keeping the Peace on Conviction.*

*A.—Security for keeping the Peace on Conviction.*

**106.** Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session, or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

Security for keeping the peace on conviction.

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond* for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

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* See Schedule V, Form X, *infra*.

*B.—Security for keeping the Peace in other cases, and Security for Good Behaviour.*

*B.—Security for keeping the Peace in other cases, and Security for Good Behaviour.*

Security for keeping the peace in other cases.

**107.** Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

Procedure of Magistrate, &c., not empowered to act under section 107.

**108.** When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from vagrants and suspected persons.

**109.** Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond,[a] with sureties,

[a] See Schedule V, Form XI, *infra*.

*B.—Security for keeping the Peace in other cases, and Security for Good Behaviour.*

for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

**110.** Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury,[a]

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond,[a] with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.[b]

Proviso as to European vagrants.

**111.** The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

IX of 1874.

Order to be made.

**112.** When a Magistrate acting under section 107, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Procedure in respect of person present in Court.

**113.** If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

**114.** If such person is not present in Court, the Magistrate shall issue a summons[c] requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace and that such breach of the peace

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[a] Or, in British Burma, earns his livelihood by carrying on or assisting in carrying on the game of "*ti*" or any other game or pretended game of a like nature—see Act XVI of 1884, section 8.

[b] See Schedule V, Form XI, *infra*.

[c] See Schedule V, Form XII, *infra*.

cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

*B.—Security for keeping the Peace in other cases, and Security for Good Behaviour.*

Copy of order under section 112 to accompany summons or warrant.

**115.** Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance.

**116.** The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Inquiry as to truth of information.

**117.** When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

Order to give security.

**118.** If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

*first*—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than that specified in the order made under section 112:

*secondly*—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

*thirdly*—that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

*(Part IV.—Prevention of Offences. Chapter VIII.—Of Security for keeping the Peace and for Good Behaviour. Secs. 119-123.)*

*B.—Security for keeping the Peace in other cases and Security for Good Behaviour.*

Discharge of person informed against.

**119.** If, on an enquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

*C.—Proceedings in all cases subsequent to Order to furnish Security.*

*C.—Proceedings in all cases subsequent to Order to furnish Security.*

Commencement of period for which security is required.

**120.** If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

Contents of bond.

**121.** The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to reject sureties.

**122.** A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reason[a] to be recorded by the Magistrate, such surety is an unfit person.

Imprisonment in default of security.

**123.** If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison,[b] or, if he is already in prison, be detained in prison,[c] until such period expires or until within such period he gives the security[d] to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Proceedings when to be laid before

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give

[a] *Sic.* Read 'reasons.'

[b] See Schedule V, Forms XIII & XIV, *infra.*

[c] As to punishment for escaping or attempting to escape from custody in such cases—see Act XLV of 1860, section 225A.

[d] See Schedule V, Form XV, *infra.*

*C.—Proceedings in all cases subsequent to Order to furnish Security.*

High Court or Court of Session.

such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Kind of imprisonment.

Imprisonment for failure to give security for keeping the peace shall be simple.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Power to release persons imprisoned for failing to give security.

**124.** Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.[a]

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.[b]

Power of District Magistrate to cancel any bond for keeping the peace.

**125.** The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his District not superior to his Court.

Discharge of sureties.

**126.** Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

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a, b See Schedule V, Form XV, *infra*.

*C.—Proceedings in all cases subsequent to Order to furnish Security.*

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

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## CHAPTER IX.

### UNLAWFUL ASSEMBLIES.

**Assembly to disperse on command of Magistrate or Police-officer.**

**127.** Any Magistrate or officer in charge of a Police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

This section applies to the police in the towns of Calcutta and Bombay.

**Use of civil force to disperse.**

**128.** If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

XX of 1869.

**Use of military force.**

**129.** If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

**Duty of officer commanding troops required by Magistrate to disperse assembly.**

**130.** When a Magistrate determines to disperse any such assembly by military force, he may require any Commissioned or Non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

XX of 1869.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Power of Commissioned Military officers to disperse assembly.

**131.** When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any Commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this chapter.

**132.** No prosecution against any Magistrate, Military officer, Police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and

(*a*) no Magistrate or Police-officer acting under this chapter in good faith,[a]

(*b*) no officer acting under section 131 in good faith,[a]

(*c*) no person doing any act in good faith[a] in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

## CHAPTER X.

### Public Nuisances.

Conditional order for removal of nuisance.

**133.** [b] Whenever a District Magistrate, a Sub-divisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information, and on taking such evidence (if any) as he thinks fit,

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[a] For definition of 'good faith,' see Act XLV of 1860, sections 52 and 76.

[b] The powers of a District Magistrate under this section may be conferred on Municipal Boards in the North-Western Provinces and Oudh, and thereupon sections 133 to 142 apply (with a modification in section 133)—see Act XV of 1883, section 57.

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair or support is necessary or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order* requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair or support it; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary and recreative purposes.

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* See Schedule V, Form XVI, *infra*.

Service or notification of order.

**134.** The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to whom order is addressed to obey,

**135.** The person against whom such order is made shall—

(*a*) perform, within the time specified in the order, the act directed thereby; or

or show cause or claim jury.

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Consequence of his failing to do so.

**136.** If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 155,[a] he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute. XLV of 1860.

Procedure where he appears to show cause.

**137.** If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Procedure where he claims jury.

**138.** On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury[b] consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

Procedure where jury finds Magistrate's order to be reasonable.

**139.** If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

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[a] *Sic.* Read '135.'

[b] See Schedule V, Form XVII, *infra*.

In other cases, no further proceedings shall be taken.

**140.** When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice[a] of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code. XLV of 1860.

Procedure on order being made absolute.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorise its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

Consequences of disobedience to order.

No suit shall lie in respect of anything done in good faith[b] under this section.

**141.** If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Procedure on failure to appoint jury or omission to return verdict.

**142.** If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction[c] to the person against whom the order was made as is required to obviate or prevent such danger or injury.

Injunction pending inquiry.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything done in good faith[b] by a Magistrate under this section.

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[a] See Schedule V, Form XVIII, *infra*.

[b] For definition of "good faith," see Act XLV of 1860, sections 52 and 76.

[c] See Schedule V, Form XIX, *infra*.

Magistrate may prohibit repetition or continuance of public nuisances.

**143.** A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order[a] any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law. XLV of 1860.

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## CHAPTER XI.

### Temporary Orders in Urgent Cases of Nuisance.

Power to issue order absolute at once in urgent cases of nuisance.

**144.** In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order[b] stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

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[a] See Schedule V, Form XX, *infra*.

[b] See Schedule V, Form XXI, *infra*.

## CHAPTER XII.

### Disputes as to Immoveable Property.

**145.** Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

Inquiry as to possession.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order[a] declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.[b]

Party in possession to retain possession until legally evicted.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

**146.** If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it[c] until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Power to attach subject of dispute.

**147.** Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or

Disputes concerning easements, &c.

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[a] See Schedule V, Form XXII, *infra*.

[b] For limitation of suits to recover possession of such property, see Act XV of 1877, Schedule II, Article 47.

[c] See Schedule V, Form XXIII, *infra*.

prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order* permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

Local inquiry.

**148.** Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

Order as to costs.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

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## CHAPTER XIII.

### Preventive Action of the Police.

Police to prevent cognizable offences.

**149.** Every Police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence.

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* See Schedule V, Form XXIV, *infra*.

**150.** Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence. Information of design to commit such offences.

**151.** A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented. Arrest to prevent such offences.

**152.** A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation. Prevention of injury to public property.

**153.** Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false. Inspection of weights and measures.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

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# PART V.

## INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

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## CHAPTER XIV.

**154.** Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf. Information in cognizable cases.

**155.** When information is given to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, Information in non-cognizable cases.

he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Investigation into non-cognizable cases.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a Police-station may exercise in a cognizable case.

Investigation into cognizable cases.

**156.** Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Procedure where cognizable offence suspected.

**157.** If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Provided as follows :—

Where local investigation dispensed with.

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Where Police-officer in charge sees no sufficient ground for investigation.

(*b*) if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of the cases mentioned in clauses (*a*) and (*b*), the officer in charge of the Police station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

*(Part V.—Information to the Police and their Powers to Investigate. Chapter XIV. Secs. 158-163.)*

**158.** Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Reports under section 157 how submitted.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

**159.** Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

**160.** Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Police-officer's power to require attendance of witnesses.

**161.** Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Examination of witnesses by police.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

**162.** No statement, other than a dying declaration, made by any person to a Police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or be used as evidence against the accused.

Statements to police not to be signed or admitted in evidence.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

I of 1872.

**163.** No Police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

No inducement to be offered.

I of 1872.

But no Police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will.

Power to record statements and confessions.

**164.** Any Magistrate not being a Police-officer may record any statement or confession made to him in the course of an investigation under this chapter or at any time afterwards before the commencement of the inquiry or trial.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

"(*Signed*) A. B.,
*Magistrate.*"

Search by Police-officer.

**165.** Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants[a] shall, so far as may be, apply to a search made under this section.

When officer in charge of Police-station may require another to issue search-warrant.

**166.** An officer in charge of a Police-station may require an officer in charge of another Police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

Procedure when investigation cannot be completed in 24 hours.

**167.** Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report of investigation by subordinate Police-officer.

**168.** When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

Release of accused when evidence deficient.

**169.** If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a

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[a] See *supra*, sections 96 to 99.

Magistrate, such officer shall, if such person is in custody, release him on his executing a bond,[a] with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.

Case to be sent to Magistrate when evidence is sufficient.

**170.** If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officers[b] shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial; or, if the offence is bailable and the accused is able to give security, shall take security[c] from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany Police-officer.

**171.** No complainant or witness on his way to[d] Court of the Magistrate shall be required to accompany a Police-officer,

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[a] See Schedule V, Form XXV, *infra*.
[b] *Sic.* Read "officer."
[c] See Schedule V, Form XXVI, *infra*.
[d] Insert "the."

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Complainants and witnesses not to be subjected to restraint.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Recusant complainant or witness may be forwarded in custody.

**172.** Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Diary of proceedings in investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

I of 1872.

**173.** Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Report of Police-officer.

Where a superior officer of police has been appointed under section 158, the report shall be submitted through him, and he may, pending the orders of the Magistrate, direct the officer in charge of the Police-station to make further investigation.

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Police to inquire and report on suicide, &c.

174.* Every officer in charge of a Police-station, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the Police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

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* This section does not apply to the police in the town of Madras—see section 1, cl. (*e*), *supra*.

**175.**[a] An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture. Power to summon persons.

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

**176.**[b] When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the Police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case. Inquiry by Magistrate into cause of death.

[c] Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined. Power to disinter corpses.

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# PART VI.

## PROCEEDINGS IN PROSECUTIONS.

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## CHAPTER XV.

### OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

*A.—Place of Inquiry or Trial.*

### *A.—Place of Inquiry or Trial.*

*A.—Place of Inquiry or Trial.*

**177.** Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. Ordinary place of inquiry and trial.

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[a], [b] These sections do not apply to the police in the town of Madras—see section 1, cl (*e*), *supra*.

[c] Compare Act IV of 1871, section 11.

*A.—Place of Inquiry or Trial.*

Power to order cases to be tried in different Sessions Divisions.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division:

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

24 & 25 Vic., cap. 104.

Accused triable in district where act is done or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

*Illustrations.*

(*a*) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(*b*) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(*c*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

*Illustrations.*

(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods

*A.—Place of Inquiry or Trial.*

were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Being a thug or belonging to a gang of dacoits, escape from custody, &c.

**181.** The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Stealing.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Place of inquiry or trial where scene of offence is uncertain or not in one district only; or where offence is continuing, or consists of several acts.

**182.** When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Offence committed on a journey.

**183.** An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offences against Railway, Telegraph, Post-office and Arms Acts.

IV of 1879.
IV of 1883.
I of 1876.
XIV of 1866.
XI of 1878.

**184.** All offences against the provisions of any law for the time being in force relating to Railways,[a] Telegraphs,[b] the Post-office[c] or Arms and Ammunition[d] may be inquired into or tried in a Presidency-town, whether the

[a] See Acts IV of 1879 and IV of 1883.
[b] See Act I of 1876.
[c] See Act XIV of 1866.
[d] See Act XI of 1878.

offence is stated to have been committed within such town or not: provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

*A.—Place of Inquiry or Trial.*

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

**185.** Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is may decide by which Court the offence shall be inquired into or tried.

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

Power to issue summons or warrant for offence committed beyond local jurisdiction:

**186.** When a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Magistrate's procedure on arrest.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Procedure where warrant issued by Subordinate Magistrate.

**187.** If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have com-

*A.—Place of Inquiry or Trial.*

mitted is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

**188.** When an European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

XXI of 1879.

Power to direct copies of depositions and exhibits to be received in evidence.

**189.** Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

"Political Agent" defined.

**190.** In sections 188 and 189 the expression "Political Agent"[a] means and includes—

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

(*b*) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent, under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

XXI of 1879.

[a] Similar definition in Act XXI of 1879, section 3.

*B.—Conditions requisite for Initiation of Proceedings.*

*B.—Conditions requisite for Initiation of Proceedings.*

Cognizance of offences by Magistrates.

**191.** Except as hereinafter provided, any Presidency Magistrate, District Magistrate [a]Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police report of such facts;

(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences for which he may try or commit for trial.

[b]When a Magistrate takes cognizance of an offence under clause (*c*), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session.[b]

Transfer of cases by Magistrates.

**192.** Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his District who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Cognizance of offences by Courts of Session.

**193.** Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

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[a] Insert 'or'.

[b-b] See Act III of 1884, section 2.

*B.—Conditions requisite for Initiation of Proceedings.*

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

Cases to be tried by Additional and Joint Sessions Judges;

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

by Assistant Sessions Judges.

**194.** The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Cognizance of offences by High Court.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

24 & 25 Vic., cap. 104.

**195.** No Court shall take cognizance—

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

XLV of 1860.

Prosecution for contempts of lawful authority of public servants.

(*b*) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

XLV of 1860.

Prosecution for certain offences against public justice.

(*c*) of any offence described in section 463, or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

XLV of 1860.

Prosecution for certain offences relating to documents given in evidence.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

Nature of sanction necessary.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate;

and no such sanction shall remain in force for more than six months from the date on which it was given.

*B.—Conditions requisite for Initiation of Proceedings.*

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

Prosecution for offences against the State.

**196.** No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf. XLV of 1860.

Prosecution of Judges and public servants.

**197.** When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Power of Government as to prosecution.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Prosecution for breach of contract, defamation and offences against marriage.

**198.** No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence. XLV of 1860.

Prosecution for adultery or enticing a married woman.

**199.** No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed. XLV of 1860.

## CHAPTER XVI.

### Of Complaints to Magistrates.

Examination of complainant.

**200.** A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192:

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

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Procedure by Magistrate not competent to take cognizance of the case.

**201.** If the complaint has been made in writing and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

Postponement of issue of process.

**202.** If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a Police-officer, or by such other person, not being a Magistrate or Police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

This section applies to the police in the towns of Calcutta and Bombay.

Dismissal of complaint.

**203.** The Magistrate before whom a complaint is made or to whom it has been transferred may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding.[a]

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## CHAPTER XVII.

### Of the Commencement of Proceedings before Magistrates.

Issue of process.

**204.** If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Nothing in this section shall be deemed to affect the provisions of section 90.

Magistrate may dispense with personal attendance of accused.

**205.** Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

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[a] See Act XLV of 1860, section 95.

## CHAPTER XVIII.

### Of Inquiry into Cases triable by the Court of Session or High Court.

Power to commit for trial.

**206.** Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate[a] Magistrate of the first class, or any Magistrate empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Procedure in inquiries preparatory to commitment.

**207.** The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Taking of evidence produced.

**208.** The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

Process for production of further evidence.

If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

When accused person to be discharged.

**209.** When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

When charge is to be framed.

**210.** When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for

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[a] Insert 'or'.

committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Charge to be explained, and copy furnished, to accused.

As soon as the charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

List of witnesses for defence on trial.

**211.** The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

Further list.

The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Power of Magistrate to examine such witnesses.

**212.** The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

Order of commitment.

**213.** When the accused on being required to give in a list under section 211 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

Person charged outside Presidency-towns jointly with European British subject.

**214.** If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Quashing commitments under section 213 or 214.

**215.** A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

Summons to witnesses for defence when

**216.** When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the

witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed: accused is committed.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness. Refusal to summon unnecessary witness unless deposit made.

**217.** Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be. Bond of complainants and witnesses.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be. Detention in custody in case of refusal to attend or to execute bond.

**218.** When the accused is committed for trial, the Magistrate shall issue an order* to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge; Commitment when to be notified.

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court. Charge, &c., to be forwarded to High Court, or Court of Session.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record. English translation to be forwarded to High Court.

* See Schedule V, Form XXVII, *infra*.

Power to summon supplementary witnesses.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Custody of accused pending trial.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail,[a] commit the accused, by warrant, to custody.

## CHAPTER XIX.

### Of the Charge.

*Form of Charges.*[b]

*Form of Charges.*

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Previous conviction when to be set out.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award,[c] the fact, date and place

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[a] See Chapter XXXIX, *infra*.

[b] See Schedule V, Form XXVIII, *infra*.

[c] See Act XLV of 1860, section 75; Act VI of 1864, sections 3 and 4; and sections 310, 348 and 511, *infra*.

*Form of Charges.*

of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

*Illustrations.*

(*a*) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisoes to that exception applied to it.

XLV of 1860.

(*b*) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

XLV of 1860.

XLV of 1860.

(*c*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

XLV of 1860.

XLV of 1860.

(*d*) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Particulars as to time, place and person.

**222.** The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

When manner of committing offence must be stated.

**223.** When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

*Illustrations.*

(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

*Form of Charges.*

(*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence is punishable.

**224.** In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable,

Effect of errors.

**225.** No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

*Illustrations.*

(*a*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material. XLV of 1860.

(*b*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively

*Form of Charges.*

to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e*) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled and that the error was material.

Procedure on commitment without charge or with imperfect charge.

**226.** When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to, or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Court may alter charge.

**227.** Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

When trial may proceed immediately after alteration.

**228.** If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When new trial may be directed, or trial suspended.

**229.** If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

**230.** If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Recall of witnesses, when charge altered.

**231.** Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration, any witness who may have been examined.

Effect of material error.

*Form of Charges.*

**232.** If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

*Illustration.*

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction. XLV of 1860.

*Joinder of Charges.*

*Joinder of Charges.*

Separate charges for distinct offences.

**233.** For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

*Illustration.*

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Three offences of same kind within year may be charged together.

**234.** When a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law. XLV of 1860.

I.—Trial for more than one offence.

**235.** I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

II.—Offence falling within

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences

*Joinder of Charges.*

are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences,

two definitions.

III.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

III.—Acts constituting one offence, but constituting when combined a different offence.

XLV of 1860. Nothing contained in this section shall affect the Indian Penal Code, section 71.

*Illustrations-*

to paragraph I—

(*a*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, offences under sections 225 and 333 of the Indian Penal Code. XLV of 1860.

(*b*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code. XLV of 1860.

(*c*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 491 of the Indian Penal Code. XLV of 1860.

(*d*) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code. XLV of 1860. XLV of 1860.

(*e*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code. XLV of 1860.

(*f*) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code. XLV of 1860

(*g*) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such

*Illustrations*—contd.

*Joinder of Charges.*

to paragraph I—*contd.*

to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code. XLV of 1860.

(*h*) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code. XLV of 1860.

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code. XLV of 1860.

(*j*) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code. XLV of 1860.

(*k*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code. XLV of 1860.

(*l*) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code. XLV of 1860.

to paragraph III—

(*m*) A commits robbery on B, and in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code. XLV of 1860.

Where it is doubtful what offence has been committed.

**236.** If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

*Illustration.*

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be

*Joinder of Charges.*

charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

When a person is charged with one offence, he can be convicted of another.

**237.** If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

*Illustration.*

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

When offence proved included in offence charged.

**238.** When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

*Illustrations.*

XLV of 1860.

(*a*) A is charged under section 407 of the Indian Penal Code with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

XLV of 1860.

(*b*) A is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

What persons may be charged jointly.

**239.** When more persons than one are accused of the same offence or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately,

as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges. *Joinder of Charges.*

*Illustrations.*

(*a*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

Withdrawal of remaining charges on conviction on one of several charges.

**240.** When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

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## CHAPTER XX.

### Of the Trial of Summons-cases by Magistrates.

Procedure in summons-cases

**241.** The following procedure shall be observed by Magistrates in the trial of summons-cases.

Substance of accusation to be stated.

**242.** When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.[a]

Conviction on admission of truth of accusation.

**243.** If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the

[a] except in the case of trials of European British subjects by District Magistrates—see section 451A (4), *infra*.

words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

**244.** If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. Procedure when no such admission is made.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

**245.** If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal. Acquittal.

If he finds the accused guilty, he shall pass sentence upon him according to law.[a] Sentence.

**246.** A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons. Finding not limited by complaint or summons.

**247.** If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day. Non-appearance of complainant.

**248.** If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused. Withdrawal of complaint.

**249.** In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded Power to stop proceedings when no complainant.

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[a] See Schedule V, Form XXIX, *infra*.

by him, stop the proceedings at any stage, without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Frivolous or vexatious complaints.

**250.** If, in any case instituted upon complaint, a Magistrate acquits the accused under section 245 or section 247, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

Recovery of compensation.

The sum so awarded shall be recoverable as if it were a fine :[a] provided that, if it cannot be realized, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

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## CHAPTER XXI.

### Of the Trial of Warrant-cases by Magistrates.

Procedure in warrant-cases.

**251.** The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Evidence for prosecution.

**252.** When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon[b] to give evidence before himself such of them as he thinks necessary.

Discharge of accused.

**253.** If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which if unrebutted would warrant his conviction, the Magistrate shall discharge him.

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[a] See Schedule V, Form XXX, *infra*.
[b] See Schedule V, Form XXXI, *infra*.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

**Charge to be framed when offence appears proved.**

**254.**[a] If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

**Plea.**

**255.** The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

**Defence.**

**256.** If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

If the accused puts in any written statement, the Magistrate shall file it with the record.

**Process for compelling production of evidence at instance of accused.**

**257.** If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

**Acquittal.**

**258.** If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

**Conviction.**

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.[b]

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[a] See sections 252 and 208, *supra*.

[b] See Schedule V, Form XXIX, *infra*.

Absence of complainant.

**259.** When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded,[a] the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

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## CHAPTER XXII.

### Of Summary Trials.

Power to try summarily.

**260.** Notwithstanding anything contained in this Code,

(1) the District Magistrate,

(2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(3) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government,

may try in a summary way all or any of the following offences :—

(*a*) Offences not punishable with death, transportation or imprisonment for a term exceeding six months ;

(*b*) Offences relating to weights and measures under sections 264, 265 and 266 of the Indian Penal Code ; XLV of 1860.

(*c*) Hurt, under section 323 of the same Code ;

(*d*) Theft, under sections 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees ;

(*e*) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees ;

(*f*) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees ;

(*g*) Mischief, under section 427 of the same Code ;

(*h*) House-trespass, under section 448 of the same Code ;

(*i*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code ;

(*j*) Abetment of any of the foregoing offences ;

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[a] See section 345, *infra*.

(*k*) An attempt to commit any of the foregoing offences, when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

Power to invest Bench of Magistrates invested with less power.

**261.** The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

XLV of 1860.

(*a*) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

(*b*) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c*) Abetment of any of the foregoing offences;

(*d*) An attempt to commit any of the foregoing offences, when such attempt is an offence.

Procedure for summons and warrant-cases applicable.

**262.** In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

Record in cases where there is no appeal.

**263.** In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:—

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*) or clause (*f*) of section 260 the value of the property in respect of which the offence has been committed;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated.

Record in appealable cases.

**264.** In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Such judgment shall be the only record in cases coming within this section.

Language of record and judgment.

**265.** Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer[a] immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorized to employ clerk.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

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## CHAPTER XXIII.

### Of Trials before High Courts and Courts of Session.

#### *A.—Preliminary.*

*A.—Preliminary.*

"High Court" defined.

**266.** In this chapter, except in section 307, the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb, and such other Courts as the Governor General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter. 24 & 25 Vic., cap. 104.

Trials before High Court to be by jury.

**267.** All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury. 24 & 25 Vic., cap. 104.

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[a] Insert 'is'.

*A.—Preliminary.*

**268.** All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Trials before Court of Session to be by jury or with assessors.

**269.** The Local Government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any District, and may revoke or alter such order.

Local Government may order trials before Court of Session to be by jury.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for all such offences.

**270.** In every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor.

Trial before Court of Session to be conducted by Public Prosecutor.

*B.—Commencement of Proceedings.*

## *B.—Commencement of Proceedings.*

**271.** When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Commencement of trial.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Plea of guilty.

**272.** If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try case :

Refusal to plead or claim to be tried.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Trial by same jury or assessors of several offenders in succession.

**273.** In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Entry on unsustainable charge.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

Effect of entry.

*C.—Choosing a Jury.*

## *C.—Choosing a Jury.*

**274.** In trials before the High Court the jury shall consist of nine persons.

Number of jury.

*C.—Choosing a Jury.*

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

Jury for trial of persons not Europeans or Americans before Court of Session.

**275.** In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jurors to be chosen by lot.

**276.** The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct:

Proviso:

existing practice maintained;

Provided that—

*first*, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

persons not summoned when eligible;

*secondly*, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; and

trials before special jurors.

*thirdly*, in the Presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

Names of jurors to be called.

**277.** As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection to jurors.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection without grounds stated.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Grounds of objection.

**278.** Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed—

(*a*) some presumed or actual partiality in the juror;

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time

*C.—Choosing a Jury.*

being in force, or being, under the age of twenty-one or above the age of sixty years;

(*c*) his having by habit or religious vows relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of police or being entrusted with police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*g*) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

**Decision of objection.**

**279.** Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

**Supply of place of juror against whom objection allowed.**

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278 and allowed.

**Foreman of jury.**

**280.** When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

**Swearing of jurors.**

**281.** When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

*X of 1873.*

**Procedure when juror ceases to attend, &c.**

**282.** If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to under-

stand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen. *C.—Choosing a Jury.*

In each of such cases the trial shall commence anew.

Discharge of jury in case of sickness of prisoner.

**283.** The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

*D.—Choosing Assessors.* *D.—Choosing Assessors.*

Assessors how chosen.

**284.** When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Procedure when assessor is unable to attend.

**285.** If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

*E.—Trial to Close of Cases for Prosecution and Defence.* *E.—Trial to Close of Cases for Prosecution and Defence.*

Opening case for prosecution.

**286.** When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused. XLV of 1860.

Examination of witnesses.

The prosecutor shall then examine his witnesses.

Examination of accused before Magistrate to be evidence.

**287.** The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.[a]

Evidence given at preliminary inquiry admissible.

**288.** The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Procedure after examination of witnesses for prosecution.

**289.** When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

[a] See Act I of 1872, section 80.

*E.—Trial to Close of Cases for Prosecution and Defence.*

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

Defence.

**290.** The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

Right of accused as to examination and summoning of witnesses.

**291.** The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Prosecutor's right of reply.

**292.** If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply.

View by jury or assessors.

**293.** Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not, except with the permission of the Court, suffer any

other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

*E.—Trial to Close of Cases for Prosecution and Defence.*

When juror or assessor may be examined.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Jury or assessors to attend at adjourned sitting. Locking-up jury.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day; and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

### *F.—Conclusion of Trial in cases tried by Jury.*

*F.—Conclusion of Trial in cases tried by Jury.*

Charge to jury.

297. In cases tried by jury, when the case for the defence, and the prosecutor's reply (if any), are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Duty of Judge.

298. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper, in the course of his summing up,

*F.—Conclusion of Trial in cases tried by Jury.*

express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

*Illustrations.*

(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

**299.** It is the duty of the jury—

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which according to law are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

*Illustrations.*

(*a*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

*F.—Conclusion of Trial in cases tried by Jury.*

Retirement to consider.

**300.** In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Delivery of verdict.

**301.** When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Procedure where jury differ.

**302.** If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Verdict to be given on each charge. Judge may question jury. Questions and answers to be recorded.

**303.** Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Such questions and the answers to them shall be recorded.

Amending verdict.

**304.** When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Verdict in High Court when to prevail.

**305.** When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Verdict in Court of Session when to prevail.

**306.** When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Procedure where Sessions Judge disagrees with verdict.

**307.** If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the

*F.—Conclusion of Trial in cases tried by Jury.*

case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

*G.—Re-trial of Accused after Discharge of Jury.*

### *G.—Re-trial of Accused after Discharge of Jury.*

Re-trial of accused after discharge of jury.

**308.** Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

*H.—Conclusion of Trial in Cases tried with Assessors.*

### *H.—Conclusion of Trial in Cases tried with Assessors.*

Delivery of opinions of assessors.

**309.** When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

Judgment.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinions of the assessors.

If the accused is convicted, the Judge shall pass sentence on him according to law.

*I.—Procedure in Case of Previous Conviction.*

### *I.—Procedure in Case of Previous Conviction.*

Procedure in case of previous conviction.

**310.** In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction, for any offence, the procedure laid down in sections 271, 286, 305, 306 and 309 shall be modified as follows:—

(*a*) The part of the charge stating the previous conviction shall not be

read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence. *I.—Procedure in Case of Previous Conviction.*

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury, or the Court and the assessors (as the case may be), shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

*J.—List of Jurors for High Court, and summoning Jurors for that Court.*

*J.—List of Jurors for High Court, and summoning Jurors for that Court.*

Jurors' book.

**311.** In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter.

Exemption of special jurors.

Those persons whose names are entered in the jurors' book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

Number of special jurors.

**312.** The names of not more than two hundred persons shall at any one time be entered in the special jurors' list.

Lists of common and special jurors.

**313.** The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council in the case of the High Court at Cal-

*J.—List of Jurors for High Court, and summoning Jurors for that Court.*

cutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

Discretion of officer preparing lists.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Publication of lists, preliminary and revised.

**314.** Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

Number of jurors to be summoned in Presidency-town.

**315.** Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Summoning jurors outside the Presidency-towns.

**316.** Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

**317.** In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be sum-

moned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

*J.—List of Jurors for High Court, and summoning Jurors for that Court.*

Failure of jurors to attend.

**318.** Any person summoned under section 315, section 316 or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the Judge, to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

*K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.*

*K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.*

Liability to serve as jurors or assessors.

**319.** All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside.

Exemptions.

**320.** The following persons are exempt from liability to serve as jurors or assessors, namely :—

(*a*) officers in civil employ superior in rank to a District Magistrate ;

(*b*) Judges ;

(*c*) Commissioners and Collectors of Revenue or Customs ;

(*d*) persons engaged in the Preventive Service in the Customs Department ;

(*e*) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty ;

(*f*) persons actually officiating as priests or ministers of their respective religions ;

(*g*) persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors ;

(*h*) Surgeons and others who openly and constantly practise the medical profession ;

(*i*) persons employed in the Post-office and Telegraph Departments ;

(*j*) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641 ;* XIV of 1882.

* See Act XIV of 1882, section 3.

*K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.*

(*k*) other persons exempted by the Local Government from liability to serve as jurors or assessors.

List of jurors and assessors.

**321.** The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

The list shall contain the name, place of abode and quality or business of every such person; and, if the person is an European or an American, the list shall mention the race to which he belongs.

Publication of list.

**322.** Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Objections to list.

**323.** To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list.

**324.** For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

*K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.*

Annual revision of list.

**325.** The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

District Magistrate to summon jurors and assessors.

**326.** The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the sessions, send a letter [a] to the District Magistrate requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Power to summon another set of jurors or assessors.

**327.** The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Form and contents of summons.

**328.** Every summons [b] to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

When Government or Railway servant may be excused.

**329.** Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

Court may excuse attendance of juror or assessor.

**330.** The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

List of jurors and assessors attending.

**331.** At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

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[a] See Schedule V, Form XXXII, *infra*. [b] See Schedule V, Form XXXIII, *infra*.

*K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.*

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror or assessor.

**332.** Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

*L.—Special Provisions for High Courts.*

## *L.—Special Provisions for High Courts.*

Power of Advocate General to stay prosecution.

**333.** At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Time of holding sittings.

**334.** For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings.

**335.** The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

Such officer as the Chief Justice directs shall give notice beforehand in the

local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

*L.—Special Provisions for High Courts.*

Place of trial of European British subjects.

**336.** The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they shall be tried at a particular place named.

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## CHAPTER XXIV.

### General Provisions as to Inquiries and Trials.

Tender of pardon to accomplice.

**337.** In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

Power to direct tender of pardon.

**338.** At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the com-

mitting Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

**339.** Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

Commitment of person to whom pardon has been tendered.

The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

**340.** Every person accused before any Criminal Court may of right be defended by a pleader.

Right of accused to be defended.

**341.** If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Procedure where accused does not understand proceedings.

**342.** For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

Power to examine the accused.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.[a]

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

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[a] See Act I of 1872, section 114, *Illustration* (*h*).

No oath shall be administered to the accused.

No influence to be used to induce disclosures.

**343.** Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Power to postpone or adjourn proceedings.

**344.**[a] If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

EXPLANATION.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Compounding offences.

**345.** The offences punishable under the sections of the Indian Penal Code described in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table:— XLV of 1860.

| Offence. | Sections of Indian Penal Code applicable. | Person by whom offence may be compounded. |
|---|---|---|
| Uttering words, &c., with deliberate intent to wound the religious feelings of any person. | 298 | The person whose religious feelings are intended to be wounded. |
| Causing hurt . . . . . | 323, 334 | The person to whom the hurt is caused. |
| Wrongfully restraining or confining any person. | 341, 342 | The person restrained or confined. |
| Assault or use of criminal force . . . | 352, 355, 358 | The person assaulted or to whom criminal force is used. |
| Unlawful compulsory labour . . . | 374 | The person compelled to labour. |

[a] Compare 11 & 12 Vic., cap. 42, section 21.

| Offence. | Sections of Indian Penal Code applicable. | Person by whom offence may be compounded. |
|---|---|---|
| Mischief, when the only loss or damage caused is loss or damage to a private person. | 426, 427 | The person to whom the loss or damage is caused. |
| Criminal trespass . . . . . | 447 | The person in possession of the property trespassed upon. |
| House-trespass . . . . . | 448 | |
| Criminal breach of contract of service . . | 490, 491, 492 | The person with whom the offender has contracted. |
| Adultery . . . . . | 497 | The husband of the woman. |
| Enticing or taking away or detaining with a criminal intent a married woman. | 498 | |
| Defamation . . . . . | 500 | The person defamed. |
| Printing or engraving matter knowing it to be defamatory. | 501 | |
| Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter. | 502 | |
| Insult intended to provoke a breach of the peace. | 504 | The person insulted. |
| Criminal intimidation, except when the offence is punishable with imprisonment for seven years. | 506 | The person intimidated. |

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335, section 337, or section 338 of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

XLV of 1860.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

Procedure of Provincial Magistrate in cases which he cannot dispose of.

**346.** If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when after commencement of inquiry or trial Magistrate finds case should be committed.

**347.** If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Trial of persons previously convicted of offences against coinage, stamp-law or property.

**348.** Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate. XLV of 1860.

Procedure when Magistrate cannot pass sentence sufficiently severe.

**349.** Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law: provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

**350.** Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Provided as follows:

(*a*) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(*b*) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

Detention of offenders attending Court.

**351.** Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination for any offence of which such Court can take cognizance and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

Courts to be open.

**352.** The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which

the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

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## CHAPTER XXV.

### Of the Mode of taking and recording Evidence in Inquiries and Trials.

Evidence to be taken in presence of accused.

**353.** Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Manner of recording evidence outside Presidency-towns.

**354.** In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

**355.** In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

Record in other cases outside Presidency-towns.

**356.** In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Evidence given in English.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

**357.** The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

Language of record of evidence.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

**358.** In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Option to Magistrate in cases under section 355.

**359.** Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

Mode of recording evidence under section 356 or section 357.

The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

**360.** As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused,

Procedure in regard to such evidence

when completed.

if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

Interpretation of evidence to accused or his pleader.

**361.** Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Record of evidence in Presidency Magistrates' Courts.

**362.** In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Remarks respecting demeanour of witness.

**363.** When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Examination of accused how recorded.

**364.** Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjáb, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language

of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

**Record of evidence in High Court.**

**365.** Every High Court established by Royal Charter and the Chief Court of the Panjáb may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

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## CHAPTER XXVI.

### Of the Judgment.

**Mode of delivering judgment.**

**366.** The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or, if not in custody, shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

Language of judgment.

Contents of judgment.

**367.** Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced. XLV of 1860.

Judgment in alternative.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative. XLV of 1860.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Sentence of death.

**368.** When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of transportation.

No sentence of transportation shall specify the place to which the person sentenced is to be transported.

Court not to alter judgment.

**369.** No Court, other than a High Court, when it has signed its judgment shall alter or review the same, except as provided in section 395 or to correct a clerical error.

Presidency Magistrate's judgment.

**370.** Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and,

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Judgment to be explained and copy given to accused.

**371.** The judgment shall be explained to the accused, and on his application a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Judgment when to be translated.

**372.** The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

**373.** In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

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## CHAPTER XXVII.

### Of the Submission of Sentences for Confirmation.

Sentence of death to be submitted by Court of Session.

**374.** When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court,[a] and the sentence shall not be executed unless it is confirmed by the High Court.

Power to direct further inquiry to be made or additional evidence to be taken.

**375.** If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

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[a] See Schedule V, Form XXXIV, *infra*.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

**376.** In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Confirmation or new sentence to be signed by two Judges.

**377.** In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

Procedure in case of difference of opinion.

**378.** When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court for confirmation.

**379.** In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

**380.** When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(*a*) may confirm the sentence, or pass any other sentence which the lower Court might have passed; or

(*b*) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Unless the Court of Session otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Session, the result of such inquiry and the evidence shall be certified to such Court.

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## CHAPTER XXVIII.

### Of Execution.

Execution of order passed under section 376.

**381.** When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant[a] or taking such other steps as may be necessary.

Postponement of capital sentence on pregnant woman.

**382.** If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute[b] the sentence to transportation for life.

Execution of sentences of transportation or imprisonment in other cases.

**383.** Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

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[a] See Schedule V, Forms XXXV and XXXVI, *infra*.

[b] See Schedule V, Form XXXVI, *infra*.

Direction of warrant for execution.

**384.** Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Warrant with whom to be lodged.

**385.** When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

**386.**[a] Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant[b] for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Effect of such warrant.

**387.** Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

**388.** When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the Court may direct the sentence of imprisonment to be carried into execution at once.

Who may issue warrant.

**389.** Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

Execution of sentence of whipping only.

**390.** When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping, in addition to imprisonment.

**391.** When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made with-

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[a] The provisions of sections 386 to 389 apply to fines imposed under the Andaman and Nicobar Islands Regulation, 1876—see Regulation III of 1876, section 35, as amended by Regulation I of 1884, section 7.

[b] See Schedule V, Form XXXVII, *infra*.

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in that time, until the sentence is confirmed by the Appellate Court; but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

Mode of inflicting punishment.

**392.** In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Limit of number of stripes.

In no case shall such punishment exceed thirty stripes.

Not to be executed by instalments.

**393.** No sentence of whipping shall be executed by instalments: and none of the following persons shall be punishable with whipping (namely) :—

Exemptions.

(*a*) females;

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

Whipping not to be inflicted if offender not in fit state of health.

**394.** The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Stay of execution.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Procedure if punishment cannot be inflicted under section 394.

**395.** In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Nothing in this section shall be deemed to authorize any Court to inflict

imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Execution of sentences on escaped convicts.

**396.** When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say :—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence.

**397.** When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced :

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Saving as to sections 396 and 397.

**398.** Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

**399.**[a] When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein. Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.

**400.** When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed. Return of warrant on execution of sentence.

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## CHAPTER XXIX.

### Of Suspensions, Remissions and Commutations of Sentences.

**401.** When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced. Power to suspend or remit sentences.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor General in Council or the Local Government, the Governor General in Council or the Local Government, as the case may be, may cancel such suspension or remission, whereupon such person may, if at large, be arrested by any Police-officer

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[a] Repealed in provinces in which the Reformatory Schools Act, 1876, is declared in force—see Act V of 1876, sections 1 and 2, and section 3 of this Act.

without warrant and remanded to undergo the unexpired portion of the sentence.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment.

Power to commute punishment.

**402.** The Governor General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

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## CHAPTER XXX.

### Of previous Acquittals or Convictions.

Person once convicted or acquitted not to be tried for same offence.

**403.** A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Explanation.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon

a charge under section 273, is not an acquittal for the purposes of this section.

*Illustrations.*

(*a*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(*f*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g*) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

# PART VII.

## OF APPEAL, REFERENCE AND REVISION.

## CHAPTER XXXI.

### OF APPEALS.[a]

**404.** No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Unless otherwise provided, no appeal to lie.

[a] For limitation to appeals, see Act XV of 1877, Schedule II, Articles 150, 154, 155 and 157.

Appeal from order rejecting application for restoration of attached property.

**405.** Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order requiring security for good behaviour.

**406.** Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

**407.** Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Transfer of appeals to first class Magistrate.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such subordinate Magistrate, or if already presented to the District Magistrate shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

**408.** Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session :

Provided as follows :—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session ;

(*b*) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session.

Appeals to Court of Session how heard.

**409.** An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeal from sentence of Court of Session.

**410.** Any person convicted on a trial held by a Sessions Judge, or an Additional or a Joint Sessions Judge, may appeal to the High Court.

Appeal from

**411.** Any person convicted on a trial held by a Presidency Magistrate

may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

sentence of Presidency Magistrate.

**412.** Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

**413.** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

No appeal in petty cases.

EXPLANATION.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

**414.** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

No appeal from certain summary convictions.

**415.** An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Proviso to sections 413 and 414.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

**416.** Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Saving of sentences on European British subjects.

**417.** The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on behalf of Government in case of acquittal.

**418.** An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Appeal on what matters admissible.

EXPLANATION.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law.

Petition of appeal.

**419.** Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Procedure when appellant in jail.

**420.** If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Summary rejection of appeal.

**421.** On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Notice of appeal.

**422.** If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal.

**423.** The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence,

and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same;

(*c*) in an appeal from any other order, alter or reverse such order;

(*d*) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

**Judgment of subordinate Appellate Courts.**

**424.** The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court:

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up or required to attend, to hear judgment delivered.

**Order by High Court on appeal to be certified to lower Court.**

**425.** Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

**Suspension of sentence pending appeal.**

**Release of appellant on bail.**

**426.** Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal.

**427.** When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Appellate Court may take further evidence or direct it to be taken.

**428.** In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall for the purposes of Chapter XXV be deemed to be an inquiry.

Procedure where Judges of Court of Appeal are equally divided.

**429.** When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

**430.** Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

**431.** Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

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## CHAPTER XXXII.

### Of Reference and Revision.

Reference by Presidency Magistrate to High Court.

**432.** A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference and, pending such decision,

may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

**433.** When a question had been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order. Disposal of case according to decision of High Court.

The High Court may direct by whom the costs of such reference shall be paid. Direction as to costs.

**434.** When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial. Power to reserve questions arising in original jurisdiction of High Court.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail, Procedure when question reserved.

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

**435.** The High Court or any Court of Session, or District Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court. Power to call for records of inferior Courts.

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144 and proceedings under section 176 are not proceedings within the meaning of this section.

**436.** When, on examining the record of any case under section 435 or otherwise, the Court of Session or District Magistrate considers that such case Power to order commitment.

is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged: Provided as follows—

(*a*) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made:

(*b*) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Power to order inquiry.

**437.** On examining any record, under section 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged.

Report to High Court.

**438.** The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail or on his own bond.

High Court's powers of revision.

**439.** In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427 and 428, or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the

accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

**440.** No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

Optional with Court to hear parties.

**441.** When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before over-ruling or setting aside the said decision or order.

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

**442.** When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

High Court's order to be certified to lower Court or Magistrate.

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# PART VIII.

## SPECIAL PROCEEDINGS.

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## CHAPTER XXXIII.

### Criminal Proceedings against Europeans and Americans.[a]

**443.** No Magistrate, unless he is a Justice of the Peace, and (except in the case of a [b] District Magistrate or [b] Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Magistrates who may inquire into and try charges against European British subjects.

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[a] As to the withdrawal from vagrants of their privileges as European British subjects, see Act IX of 1874, section 30, which is saved by section 3 of this Act.

[b-b] See Act III of 1884, section 3

Sessions Judge to be an European British subject. Assistant Sessions Judge to have held office for three years and to be specially empowered.

**444.** No Judge presiding in a Court of Session, [a] except the Sessions Judge,[a] shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Cognizance of offence committed by European British subject.

**445.** Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Sentences which may be passed by Provincial Magistrates.

**446.** Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a [b] District Magistrate or [b] Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both, [c] and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.[c]

When commitment is to be to Court of Session and when to High Court.

**447.** When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

Trial of offences of which one is, and the

**448.** Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or

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a-a See Act III of 1884, section 4.
b-b See Act III of 1884, section 5 (1).
c-c See Act III of 1884, section 5 (2).

transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may, nevertheless try him for the other offences.

others are not punishable with death or transportation for life.

449. Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Sentences which may be passed by Court of Session.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Procedure when Sessions Judge finds his powers inadequate.

450. [*Repealed by Act III of 1884, section 6.*]

Procedure when Sessions Judge is not an European British subject.

[a]451. (*1*) In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans or both Europeans and Americans.

Jury or assessors before High Court or Court of Session.

(*2*) When any such trial before a Court of Session would in the ordinary course be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (*1*), require that not less than half the number of the assessors shall be Europeans or Americans or both Europeans and Americans.

[b]451*A*. (*1*) In trials of European British subjects before a District Magistrate, any such subject may, in a summons-case before he is heard in his defence under section 244, or in a warrant-case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

Right of European British subject to claim jury before District Magistrate.

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[a] See Act III of 1884, section 7. [b] See Act III of 1884, section 8.

(*2*) If a claim is made under sub-section (*1*), in a summons-case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(*3*) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(*4*) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

(*5*) The provisions of sections 211, 216, 217, 219 and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused and the witnesses at every trial to be held under this section.

(*6*) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial.

(*7*). All Courts may construe any of the provisions referred to in sub-section (*5*) or sub-section (*6*), in so far as they are made applicable by that sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(*8*) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447.

Transfer to another Court in certain cases.

*451*B*. (*1*) If an accused person claims to be tried by jury under section 451*A*, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, he may, instead of issuing orders for the trial before himself under section 451*A*, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

(*2*) When a case is transferred under this section to a Sessions Judge or

* See Act III of 1884, section 8.

District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under section 451*A*.

**452.** In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Trial of European British subject and Native jointly accused.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

When Native may claim separate trial.

**453.** When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

Procedure on claim of person to be dealt with as European British subject.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

**454.** If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject

Failure to plead status a waiver.

is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

Trial under this chapter of person not an European British subject.

**455.** Where a person who is not an European British subject is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

Right of European British subject unlawfully detained to

**456.** When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court[a] which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where

[a] Original and appellate criminal jurisdiction is exercised by the High Courts at Madras and Bombay and in the North-Western Provinces over European British subjects in outlying provinces and places in British India, as follows :—

| High Courts. | Places. |
|---|---|
| Madras . . | Coorg.<br>The Upper Godávári District of the Central Provinces. |
| Bombay . . | The Nagpur, Narbada and Chhattísgarh Divisions of the Central Provinces.<br>The Parganá of Mánpur, in Central India. |
| North - Western Provinces . | Oudh.<br>The Jabalpur Division of the Central Provinces.<br>The line of railway from Allahabad to Jabalpur, and the lands and buildings appurtenant thereto, other than the Station at Satna.<br>The Morar Cantonment.<br>Ajmer and British Merwára. |

[See Home Department Notification No. 1203, dated 23rd September, 1874—*Gazette of India*, 26th September, 1874, Part I, page 484.]

The High Court at Fort William exercises original and appellate jurisdiction and has all the functions of a High Court under the Code in all criminal proceedings against European British subjects and persons charged with European British subjects in the Andaman and Nicobar Islands —see Home Department Notification No. 77, dated 15th March, 1878—*Gazette of India*, 10th March, 1878, Part I, page 132.

Original and appellate criminal jurisdiction is also exercised by the High Courts at Fort William, Madras and Bombay and in the North-Western Provinces over European British subjects, being Christians, resident in certain Native States, Territories and Chiefships—see Foreign Department Notifications, Nos. 178J. and 179J., dated 23rd September, 1874—*Gazette of India*, 26th September, 1874, Part I, pages 485 and 486; No. 215J, dated 18th December, 1874—*Gazette of India*, 19th December, 1874, Part I, page 612; Nos. 119J. and 120J., dated 9th August, 1875—*Gazette of India*, 14th August, 1875, Part I, page 404; No. 160I.J., dated 21st July, 1881—*Gazette of India*, 23rd July, 1881, Part I, page 130.

he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

apply for order to be brought before High Court.

**457.** The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Procedure on such application.

**458.** The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may direct.

Territories throughout which High Court may issue such orders.

**459.** Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Applications of Acts conferring jurisdiction on Magistrates or Courts of Session.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate[a] or any Judge presiding in a Court of Session[a] not being a Justice of the Peace.[b]

**460.** In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.

Jury for trial of Europeans or Americans.

**461.** Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and in compliance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Jury when European or American charged jointly with one of another race.

**462.** When a trial is to be held before the Court of Session in which the

Summoning

[a] See Act III of 1884, section 9.

[b] Certain words which followed these were repealed by Act III of 1884, section 9.

and empanelling jurors under section 451, 451A, 451B or 460.

accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460,[a] or before the Court of a District Magistrate or Sessions Judge proceeding under section 451A or 451B,[a] the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

The Court shall also, at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

Conduct of criminal proceedings against European British subjects, &c.

**463.** Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

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## CHAPTER XXXIV.

### LUNATICS.

Procedure in case of accused being lunatic.

**464.** When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

If such Magistrate is of opinion that the accused is of unsound mind and

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[a] See Act III of 1884, section 10.

consequently incapable of making his defence, he shall postpone further proceedings in the case.

**465.** If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

Procedure in case of person committed before Court of Session or High Court being lunatic.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

**466.** Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Release of lunatic pending investigation or trial.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

Custody of lunatic.

**467.** Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

**468.** If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

**469.** When the accused appears to be of sound mind at the time of inquiry

When

accused appears to have been insane.

or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

Judgment of acquittal on ground of lunacy.

470.[a] Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence he was by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Person acquitted on such ground to be kept in safe custody.

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a lunatic asylum, jail or other suitable place of safe custody.

Lunatic prisoners to be visited by Inspector General.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner is reported capable of making his defence.

473. If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person

[a] Compare 39 & 40 Geo. III, cap. 94.

under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

**474.** If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

Delivery of lunatic to care of relative.

**475.** Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

## CHAPTER XXXV.

### PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Procedure in cases mentioned in section 195.

**476.**[a] When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and com-

[a] Compare 14 & 15 Vic., cap. 100, section 19.

mitted before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

Power of Court of Session as to such offences committed before itself.

**477.** Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Power of Civil and Revenue Courts to complete investigation and commit to High Court or Court of Session.

**478.** When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

Procedure of Civil or Revenue Court in such cases.

**479.** When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure in certain

**480.** When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is commit- XLV of 1860.

ted in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody;[a] and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. cases of contempt.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

**481.** In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence. Record in such cases.

XLV of 1860. If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

**482.** If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate. Procedure where Court considers that case should not be dealt with under section 480.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

**483.** When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482. When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

III of 1877.

**484.** When any Court has under section 480 adjudged an offender to Discharge of

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[a] See Schedule V, Form XXXVIII, *infra*.

offender on submission or apology.

punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

**485.** If any witness before a Criminal Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant[a] under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Appeals from convictions in contempt cases.

**486.** Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

Certain Judges and Magistrates

**487.** Except as provided in sections 477, 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the

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[a] See Schedule V, Form XXXIX, *infra*.

Recorder of Rangoon and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

not to try offences referred to in section 195 when committed before themselves.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

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## CHAPTER XXXVI.

### Of the Maintenance of Wives and Children.

**488.** If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Order for maintenance of wives and children.

Such allowance shall be payable from the date of the order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant[a] for levying the amount due in manner hereinbefore provided for levying fines, and may sentence[b] such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month:

Enforcement of order.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

Proviso.

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[a] See Schedule V, Form XLI, *infra*. [b] See Schedule V, Form XL, *infra*.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases.

Alteration in allowance.

**489.** On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Enforcement of order of maintenance.

**490.** A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

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## CHAPTER XXXVII.

### DIRECTIONS OF THE NATURE OF A *HABEAS CORPUS*.

Power to issue directions of the nature of a *habeas corpus*.

**491.** Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any jail situate within such limits be

brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any commission from the Governor General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

Be. Reg. III of 1818. M. Reg. II of 1819. Bo. Reg. XXV of 1827. XXXIV of 1850. III of 1858.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819 or Bombay Regulation XXV of 1827, or the Acts of the Governor General in Council No. XXXIV of 1850 or No. III of 1858.

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# PART IX.

## SUPPLEMENTARY PROVISIONS.

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## CHAPTER XXXVIII.

### Of the Public Prosecutor.

Power to appoint Public Prosecutors.

**492.** The Governor General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

Public Prosecutor may plead

**493.** The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under

in all Courts in cases under his charge. Pleaders, privately instructed, to be under his direction.

inquiry, trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Effect of withdrawal from prosecution.

**494.** Any Public Prosecutor appointed by the Governor General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

Permission to conduct prosecution.

**495.** Any Magistrate inquiring into or trying any case may permit any person other than an officer of police below the rank of Police Inspector to conduct the prosecution; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

Any person conducting the prosecution may do so personally or by a pleader.

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## CHAPTER XXXIX.

### Of Bail.

Bail to be taken in case of bailable offence.

**496.** When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail:[a] provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond[b] without sureties for his appearance as hereinafter provided.

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[a, b] See Schedule V, Form XLII, *infra*.

**497.** When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

When bail may be taken in case of non-bailable offence.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

**498.** The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a Police-officer or Magistrate be reduced.

Power to direct admission to bail or reduction of bail.

**499.** Before any person is released on bail or released on his own bond, a bond[a] for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released, on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court, as the case may be.

Bond of accused and sureties.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

**500.** As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release[b] to the officer in charge of the jail, and such officer on receipt of the order shall release him.

Discharge from custody.

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[a] See Schedule V, Form XLII, *infra*.

[b] See Schedule V, Form XLIII, *infra*.

Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Power to order sufficient bail when that first taken is insufficient.

**501.** If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

Discharge of sureties.

**502.** All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged, either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

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## CHAPTER XL.

### Of Commissions for the Examination of Witnesses.

When attendance of witness may be dispensed with.

**503.** Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission, and procedure thereunder.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints

in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

Commission in case of witness being within Presidency-town.

**504.** If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

39 & 40 Vic., cap. 46.

Parties may examine witnesses.

**505.** The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Power of Provincial Subordinate Magistrate to apply for issue of commission.

**506.** Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

Return of commission.

**507.** After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Adjournment of inquiry or trial.

**508.** In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

## CHAPTER XLI.

### Special Rules of Evidence.

Deposition of medical witness.

**509.** The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial or other proceeding under this Code although the deponent is not called as a witness.

Power to summon medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Report of Chemical Examiner.

**510.** Any document purporting to be a report under the hand of the Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Previous conviction or acquittal how proved.

**511.** In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered:

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Record of evidence in absence of accused.

**512.** If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such

person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

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## CHAPTER XLII.

### PROVISIONS AS TO BONDS.

**Deposit instead of recognizance.**

**513.** When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

**Procedure on forfeiture of bond.**

**514.** Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.[a]

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant[b] for the attachment and sale of the moveable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

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[a], [b] See Schedule V, Forms XLIV to LIII, *infra*.

The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

Appeal from, and revision of, orders under section 514.

**515.** All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Power to direct levy of amount due on certain recognizances.

**516.** The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

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## CHAPTER XLIII.

### Of the Disposal of Property.

Order for disposal of property regarding which offence committed.

**517.** When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is live-stock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

[a] Explanation.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Order may take form of reference to District or

**518.** In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by

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[a] Compare 24 & 25 Vic., cap. 96, section 1.

the police and the seizure had been reported to him in the manner hereinafter mentioned.

Sub-divisional Magistrate.

519.[a] When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Payment to innocent purchaser of money found on accused.

520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court; and may modify, alter or annul such order.

Stay of order under section 517, 518 or 519.

XLV of 1860. 521. On a conviction under the Indian Penal Code, section 292, section 293 section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

Destruction of libellous and other matter.

The Court may, in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

XLV of 1860.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that by such force any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

Power to restore possession of immoveable property.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

523. The seizure by any Police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof,

Procedure by police upon seizure of property taken under section 51 or stolen.

[a] Compare 30 & 31 Vic. cap. 35, section 9.

or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

Procedure where no claimant appears within six months.

524. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Power to sell perishable property.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

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## CHAPTER XLIV.

### Of the Transfer of Criminal Cases.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties of[a] witnesses, or

[b](*e*) that such an order is expedient for the ends of justice,

it may order—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence ;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction ;

(3) that any particular criminal case or appeal be transferred to and tried before itself, or

[c](4) that an accused person be committed for trial to itself or to a Court of Session.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made ; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Notice to Public Prosecutor of application under this section.

Nothing in this section shall be deemed to affect any order made under section 197.

[d]**526*A*.** If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an

Adjournment on application under section 526.

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[a] *Sic.* Read 'or.'

[b] See Act III of 1884, section 11 (1).

[c] See Act III of 1884, section 11 (2).

[d] See Act III of 1884, section 12.

application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.

Power of Governor General in Council to transfer criminal cases and appeals.

527. The Governor General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court[a] to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

District or Sub-divisional Magistrate may withdraw or refer cases.

528. Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorize District Magistrate to withdraw classes of cases.

The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

[b] A Magistrate making an order under this section shall record in writing his reason for making the same.[b]

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## CHAPTER XLV.

### Of Irregular Proceedings.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely :—

(*a*) to issue a search-warrant, under section 98 ;

(*b*) to order, under section 155, the police to investigate an offence ;

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[a] For the purposes of this section the Court of the Recorder of Rangoon is to be deemed to be a High Court—see Act XVII of 1875, section 60.

[b-b] See Act III of 1884, section 13.

(*c*) to hold an inquest under section 176;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(*e*) to take cognizance of an offence under section 191, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 192;

(*g*) to tender a pardon under section 337 or section 338;

(*h*) to sell property under section 524 or section 525; or

(*i*) to withdraw a case and try it himself under section 528;

erroneously in good faith[a] does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

**530.** If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:—

(*a*) attaches and sells property under section 88;

(*b*) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;

(*c*) demands security to keep the peace;

(*d*) demands security for good behaviour;

(*e*) discharges a person lawfully bound to be of good behaviour;

(*f*) cancels a bond to keep the peace;

(*g*) makes an order, under section 133, as to a local nuisance;

(*h*) prohibits, under section 143, the repetition or continuance of a public nuisance;

(*i*) issues an order under section 144;

(*j*) makes an order under Chapter XII;

(*k*) takes cognizance, under section 191, clause (*c*), of an offence;

(*l*) passes a sentence, under section 349, on proceedings recorded by another Magistrate;

(*m*) calls, under section 435, for proceedings;

(*n*) makes an order for maintenance;

(*o*) revises, under section 515, an order passed under section 514;

(*p*) tries an offender;

(*q*) tries an offender summarily; or

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[a] For definition of 'good faith,' see Act XLV of 1860, sections 52 & 76.

(*r*) decides an appeal;

his proceedings shall be void.

Proceedings in wrong place.

**531.** No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Sub-division or other local area, unless it appears that such error occasioned a failure of justice.

When irregular commitments may be validated.

**532.** If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Non-compliance with provisions of section 164 or section 364.

**533.** If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits. I of 1872.

Omission to ask question prescribed by section 454, clause 2.

**534.** An omission to ask any person whether he is an European British subject, in a case to which the second clause of section 454 applies, shall not affect the validity of any proceeding.

Effect of omission to prepare charge.

**535.** No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

**536.** If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial by jury of offence triable with assessors.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Trial with assessors of offence triable by jury.

**537.**[a] Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195, or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.

**538.** No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

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## CHAPTER XLVI.

### MISCELLANEOUS.

**539.** Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Courts and persons before whom affidavits may be sworn.

**540.** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine

Power to summon material witness, or

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[a] Compare 11 & 12 Vic., cap. 43, section 9.

examine person present.

any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Power to appoint place of imprisonment.

**541.** Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

**542.** Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination. XV of 1869.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Interpreter to be bound to interpret truthfully.

**543.** When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Expenses of complainants and witnesses.

**544.** Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Power of Court to pay expenses or compensation out of fine.

**545.** Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may when passing judgment order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Payments to be taken into account in subsequent suit.

**546.** At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

**547.** Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Moneys ordered to be paid recoverable as fines.

**548.** If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Copies of proceedings.

**549.** The Governor General in Council may make rules, consistent with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, 1881, section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

44 & 45 Vic., cap. 58.

44 & 45 Vic., cap. 58.

Delivery to Military authorities of persons liable to be tried by Court-martial.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer or[a] any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Apprehension of such persons.

**550.** Police-officers superior in rank to an officer in charge of a Police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Powers of superior officers of police.

**551.** Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Power to compel restoration of abducted females.

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[a] *Sic.* Read 'of'.

Compensation to person groundlessly given in charge in Presidency-town.

**552.** Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested, for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

**553.** With the previous sanction of the Governor General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(*a*) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts ;

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided ;

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it ; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

**554.** Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned. Forms.

24 & 25 Vic., cap. 104.

**555.** No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself. Case in which Judge or Magistrate is personally interested.

EXPLANATION.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.[a]

**556.** The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter. Power to decide language of Courts.

**557.** All powers conferred by this Code on the Governor General in Council or on the Local Government may be exercised from time to time as occasion requires. Powers of Governor General in Council and Local Government exercisable from time to time.

**558.** The provisions of this Code shall apply, so far as may be, to all cases pending in any Criminal Court when this Code comes into force. Pending cases.

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## SCHEDULE I.

### ENACTMENTS REPEALED.

(*a*)—*Statute.*

| Year, reign and chapter. | Title. | Extent of repeal. |
|---|---|---|
| 13 Geo. III, chapter 63 . | An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe. | Section 38. |

[a] or a member of a District Board in the Panjáb—see Act XX of 1882, section 58 (2); or a member of a Municipal Committee in the Panjáb—see Act XIII of 1884, section 157; or a member of a Municipal Committee in British Burma—see Act XVII of 1884, section 146.

## SCHEDULE I—*continued.*

### ENACTMENTS REPEALED—*continued.*

(*b*)—*Acts of the Governor General in Council.*

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| XXIII of 1840 . | Execution of process . . . | So much as has not been repealed. |
| XLV of 1860 . . | Penal Code . . . . . | The illustrations to section 214. |
| V of 1861 . . | Police Act . . . . . | Section 6 and the last nine words of section 24. Section 35, down to and including the words "Provided that." |
| XVIII of 1862 . . | Criminal Procedure, Supreme Courts | So much as has not been repealed. |
| VI of 1864 . . | Whipping . . . . . | Section 7. |
| II of 1869 . . | Justices of the Peace . . . | So much as has not been repealed. |
| XXII of 1870 . . | Application to European British subjects of Acts conferring summary jurisdiction. | So much as has not been repealed. |
| IV of 1872 . . | Panjáb Laws . . . . | So far as it relates to Bengal Regulation XX of 1825. |
| X of 1872 . . | The Code of Criminal Procedure . | So much as has not been repealed. |
| XI of 1874 . . | Amending the Code of Criminal Procedure. | The whole. |
| XV of 1874 . . | Laws Local Extent . . . | So far as it relates to Bengal Regulation XX of 1825. |
| X of 1875 . . | High Courts' Criminal Procedure . | The whole Act, except section 144 and so much of section 146 as relates to informations. |
| XX of 1875 . . | Central Provinces Laws . . | So far as it relates to Bengal Regulation XX of 1825. |
| XVIII of 1876 . . | Oudh Laws . . . . . | Ditto. |

## SCHEDULE I—*concluded.*

### ENACTMENTS REPEALED—*concluded.*

(*b*)—*Acts of the Governor General in Council*—concluded.

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| IV of 1877 . . | Presidency Magistrates . . . | The whole Act, except section 57. |
| XXI of 1879 . . | Extradition . . . . . | Chapter III. |
| X of 1881 . . | Coroners . . . . . | Sections 8 and 9. |

(*c*)—*Regulations.*

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| Bengal Regulation XX of 1825. | Jurisdiction of Courts Martial . | So much as has not been repealed. |
| III of 1872 . . | Santhal Parganas Settlement . . | So far as relates to Act X of 1872. |
| IX of 1874 . . | Arakan Hills District Laws . . | So far as it relates to Acts II of 1869, X of 1872 and XI of 1874. |
| III of 1877 . . | Ajmer Laws . . . . | So far as it relates to Bengal Regulation XX of 1825. |

(*d*)—*Act of the Governor of Fort St. George in Council.*

| Number and year. | Subject. | Extent of repeal. |
|---|---|---|
| VIII of 1867 . . | Police . . . . . | Section 9. |

# SCHEDULE II.

## TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code", are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

### CHAPTER V.—ABETMENT.

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 109 | Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment. | May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise. | According as a warrant or summons may issue for the offence abetted. | According as the offence abetted is bailable or not. | According as the offence abetted is compoundable or not. | The same punishment as for the offence abetted. | The Court by which the offence abetted is triable. |
| 110 | Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Ditto . . . . | Ditto. |

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| 111 | Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso. | Ditto . . | Ditto . . | Ditto . | Ditto . | The same punishment as for the offence intended to be abetted. | Ditto. |
| 113 | Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor. | Ditto . . | Ditto . . | Ditto . | Ditto . | The same punishment as for the offence committed. | Ditto. |
| 114 | Abetment of any offence, if abettor is present when offence is committed. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 115 | Abetment of an offence, punishable with death or transportation for life, if the offence be not committed in consequence of the abetment. | Ditto . . | Ditto . . | Not bailable | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| | If an act which causes harm be done in consequence of the abetment. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 14 years and fine. | Ditto. |
| 116 | Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment. | Ditto . . | Ditto . . | According as the offence abetted is bailable or not. | Ditto . | Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |
| | If the abettor or the person abetted be a public servant whose duty it is to prevent the offence. | Ditto . . | Ditto . . | Ditto | Ditto . | Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |

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# SCHEDULE II.—*continued.*

## CHAPTER V.—ABETMENT—*concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 117 | Abetting the commission of an offence by the public, or by more than ten persons. | May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise. | According as a warrant or summons may issue for the offence abetted. | According as the offence abetted is bailable or not. | According as the offence abetted is compoundable or not. | Imprisonment of either description for 3 years, or fine, or both. | The Court by which the offence abetted is triable. |
| 118 | Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed. | Ditto . . | Ditto . . | Not bailable | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| | If the offence be not committed. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Ditto. |
| 119 | A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed. | Ditto . . | Ditto . . | According as the offence abetted is bailable or not. | Ditto . | Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |

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| | If the offence be punishable with death or transportation for life. | Ditto . . | Ditto . . | Not bailable | Ditto . . | Imprisonment of either description for 10 years. | Ditto. |
| | If the offence be not committed. | Ditto . | Ditto . . | According as the offence abetted is bailable or not. | Ditto . . | Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both. | Ditto. |
| 120 | Concealing a design to commit an offence punishable with imprisonment, if the offence be committed. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Ditto . . . | Ditto. |
| | If the offence be not committed. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both. | Ditto. |

## CHAPTER VI.—OFFENCES AGAINST THE STATE.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 121 | Waging or attempting to wage war, or abetting the waging of war, against the Queen. | Shall not arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Death, or transportation for life, and forfeiture of property. | Court of Session. |
| 121A | Conspiring to commit certain offences against the State. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Transportation for life or any shorter term, or imprisonment of either description for 10 years. | Ditto. |

## SCHEDULE II—*continued.*

### CHAPTER VI.—OFFENCES AGAINST THE STATE—*concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 122 | Collecting arms, &c., with the intention of waging war against the Queen. | Shall not arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property. | Court of Session. |
| 123 | Concealing with intent to facilitate a design to wage war. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 124 | Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power. | Ditto . . | Ditto . . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 124A | Exciting, or attempting to excite, disaffection. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine. | Ditto. |
| 125 | Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine. | Ditto. |

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| 126 | Committing depredation on the territories of any Power in alliance or at peace with the Queen. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine, and forfeiture of certain property. | Ditto. |
| 127 | Receiving property taken by war or depredation mentioned in sections 125 and 126. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 128 | Public servant voluntarily allowing prisoner of State or War in his custody to escape. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 129 | Public servant negligently suffering prisoner of State or War in his custody to escape. | Ditto . . | Ditto . . . | Bailable . | Ditto . | Simple imprisonment for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 130 | Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner. | Ditto . . | Ditto . . | Not bailable. | Ditto . | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. |

## CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 131 | Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty. | May arrest without warrant. | Warrant . | Not bailable. | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |
| 132 | Abetment of mutiny, if mutiny is committed in consequence thereof. | Ditto . . | Ditto . . | Ditto . | Ditto . | Death, or transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |

## SCHEDULE II—*continued.*

### CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY—*concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 133 | Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office. | May arrest without warrant. | Warrant . | Not bailable . | Not compoundable. | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 134 | Abetment of such assault, if the assault is committed. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 135 | Abetment of the desertion of an officer, soldier or sailor. | Ditto . . | Ditto . . | Bailable . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 136 | Harbouring such an officer, soldier or sailor who has deserted. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 137 | Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof. | Shall not arrest without warrant. | Summons . | Ditto . | Ditto . | Fine of 500 rupees . | Ditto. |

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|---|---|---|---|---|---|---|---|
| 138 | Abetment of act of insubordination of an officer, soldier or sailor, if the offence be committed in consequence. | May arrest without warrant. | Warrant | Ditto | Ditto | Imprisonment of either description for 6 months, or fine, or both. | Ditto. |
| 140 | Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier. | Ditto | Summons | Ditto | Ditto | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 143 | Being member of an unlawful assembly. | May arrest without warrant. | Summons | Bailable | Not compoundable. | Imprisonment of either description for 6 months, or fine, or both. | Any Magistrate. |
| 144 | Joining an unlawful assembly armed with any deadly weapon. | Ditto. | Warrant | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 145 | Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 147 | Rioting | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 148 | Rioting, armed with a deadly weapon. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

# SCHEDULE II—*continued.*

## CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—*continued.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 149 | If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence. | According as arrest may be made without warrant for the offence or not. | According as a warrant or summons may issue for the offence. | According as the offence is bailable or not. | Not compoundable. | The same as for the offence. | The Court by which the offence is triable. |
| 150 | Hiring, engaging or employing persons to take part in an unlawful assembly. | May arrest without warrant. | According to the offence committed by the person hired, engaged or employed. | Ditto . | Ditto . | The same as for a member of such assembly, and for any offence committed by any member of such assembly. | Ditto. |
| 151 | Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse. | Ditto . . | Summons . | Bailable . | Ditto . | Imprisonment of either description for 6 months, or fine, or both. | Any Magistrate. |
| 152 | Assaulting or obstructing public servant when suppressing riot, &c. | Ditto . . | Warrant . | Ditto . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

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|---|---|---|---|---|---|---|---|
| 153 | Wantonly giving provocation with intent to cause riot, if rioting be committed. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 1 year, or fine, or both. | Any Magistrate. |
| | If not committed . . | Ditto . . | Summons . | Ditto . | Ditto . | Imprisonment of either description for 6 months, or fine, or both. | Ditto. |
| 154 | Owner or occupier of land not giving information of riot, &c. | Shall not arrest without warrant. | Ditto . . | Ditto . | Ditto . | Fine of 1,000 rupees . | Presidency Magistrate or Magistrate of the first or second class. |
| 155 | Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it. | Ditto . . | Ditto . . | Ditto . | Ditto . | Fine . . . . | Ditto. |
| 156 | Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto. . . . | Ditto. |
| 157 | Harbouring persons hired for an unlawful assembly. | May arrest without warrant. | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 6 months, or fine, or both. | Ditto. |
| 158 | Being hired to take part in an unlawful assembly or riot. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto. . . . | Ditto. |

## SCHEDULE II—*continued.*

### CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—*concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | Or to go armed . . | May arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 160 | Committing affray . | Shall not arrest without warrant. | Summons . | Ditto . | Ditto . | Imprisonment of either description for 1 month, or fine of 100 rupees, or both. | Any Magistrate. |

### CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 161 | Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act. | Shall not arrest without warrant. | Summons . | Bailable . | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 162 | Taking a gratification in order by corrupt or illegal means to influence a public servant. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |

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|---|---|---|---|---|---|---|---|
| 163 | Taking a gratification for the exercise of personal influence with a public servant. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |
| 164 | Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 165 | Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 166 | Public servant disobeying a direction of the law with intent to cause injury to any person. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 1 year, or fine or both. | Ditto. |
| 167 | Public servant framing an incorrect document with intent to cause injury. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 168 | Public servant unlawfully engaging in trade. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |

## SCHEDULE II—*continued.*

### CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—*concluded.*

XLV of 1860.

| 2 | | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 169 | Public servant unlawfully buying or bidding for property. | Shall not arrest without warrant. | Summons . | Bailable . | Not compoundable. | Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased. | Presidency Magistrate or Magistrate of the first class. |
| 170 | Personating a public servant. | May arrest without warrant. | Warrant . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Any Magistrate. |
| 171 | Wearing garb or carrying token used by public servant with fraudulent intent. | Ditto . . | Summons . | Ditto . | Ditto . | Imprisonment of either description for 3 months, or fine of 200 rupees, or both. | Ditto. |

### CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 172 | Absconding to avoid service of summons or other proceeding from a public servant. | Shall not arrest without warrant. | Summons . | Bailable . | Not compoundable. | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Any Magistrate. |
| | If summons or notice require attendance in person, &c., in a Court of Justice. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto. |

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| 173 | Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| | If summons, &c., require attendance in person, &c., in a Court of Justice. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 174 | Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Any Magistrate. |
| | If the order require personal attendance, &c., in a Court of Justice. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 175 | Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. |

## SCHEDULE II—*continued.*

### CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*continued.*

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| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | If the document is required to be produced in or delivered to a Court of Justice. | Shall not arrest without warrant. | Summons . | Bailable . | Not compoundable. | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. |
| 176 | Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |

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| | If the notice or information required respects the commission of an offence, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 177 | Knowingly furnishing false information to a public servant. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| | If the information required respects the commission of an offence, &c. | Ditto . . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 178 | Refusing oath when duly required to take oath by a public servant. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. |
| 179 | Being legally bound to state truth, and refusing to answer questions. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 180 | Refusing to sign a statement made to a public servant when legally required to do so. | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 3 months, or fine of 500 rupees, or both. | Ditto. |

## SCHEDULE II—*continued.*

### CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*continued.*

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| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 181 | Knowingly stating to a public servant on oath as true that which is false. | Shall not arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 182 | Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person. | Ditto . . | Summons . | Ditto. . | Ditto. . | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 183 | Resistance to the taking of property by the lawful authority of a public servant. | Ditto . . | Ditto . . | Ditto. . | Ditto. . | Ditto . . . | Ditto. |
| 184 | Obstructing sale of property offered for sale by authority of a public servant. | Ditto . . | Ditto . . | Ditto. . | Ditto. . | Imprisonment of either description for 1 month, or fine of 500 rupees, or both. | Ditto. |
| 185 | Bidding by a person under a legal incapacity to purchase it, for property at | Ditto . . | Ditto . . | Ditto. . | Ditto. . | Imprisonment of either description for 1 month, or fine of 200 rupees, | Ditto. |

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| | a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby. | | | | | or both. | |
| 186 | Obstructing public servant in discharge of his public functions. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Ditto. |
| 187 | Omission to assist public servant when bound by law to give such assistance. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Simple imprisonment for 1 month, or fine of 200 rupees, or both. | Ditto. |
| | Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Simple imprisonment for 6 months, or fine of 500 rupees, or both. | Ditto. |
| 188 | Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Simple imprisonment for 1 month, or fine of 200 rupees, or both. | Ditto. |
| | If such disobedience causes danger to human life, health or safety, &c. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |

## SCHEDULE II—*continued.*

### CHAPTER XI.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | | |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 189 | Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act. | Shall not arrest without warrant. | Summons | Bailable | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 190 | Threatening any person to induce him to refrain from making a legal application for protection from injury. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 1 year, or fine, or both. | Ditto. |

### CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 193 | Giving or fabricating false evidence in a judicial proceeding. | Shall not arrest without warrant. | Warrant | Bailable | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

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| | Giving or fabricating false evidence in any other case. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years and fine. | Ditto. |
| 194 | Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence. | Ditto | Ditto | Not bailable | Ditto | Transportation for life, or rigorous imprisonment for 10 years, and fine. | Court of Session. |
| | If innocent person be thereby convicted and executed. | Ditto | Ditto | Ditto | Ditto | Death, or as above | Ditto. |
| 195 | Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards. | Ditto | Ditto | Ditto | Ditto | The same as for the offence. | Ditto. |
| 196 | Using in a judicial proceeding evidence known to be false or fabricated. | Ditto | Ditto | According as the offence of giving such evidence is bailable or not. | Ditto | The same as for giving or fabricating false evidence. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 197 | Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence. | Ditto | Ditto | Bailable | Ditto | The same as for giving false evidence. | Ditto. |

## SCHEDULE II—*continued.*

### CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 198 | Using as a true certificate one known to be false in a material point. | Shall not arrest without warrant. | Warrant . | Bailable . | Not compoundable. | The same as for giving false evidence. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 199 | False statement made in any declaration which is by law receivable as evidence. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 200 | Using as true any such declaration known to be false. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 201 | Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session. |
| | If punishable with transportation for life or imprisonment for 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or |

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| | | | | | | | Magistrate of the first class. |
| | If punishable with less than 10 years' imprisonment. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 202 | Intentional omission to give information of an offence by a person legally bound to inform. | Ditto . . | Summons . | Ditto . | Ditto . | Imprisonment of either description for 6 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 203 | Giving false information respecting an offence committed. | Ditto . . | Warrant . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 204 | Secreting or destroying any document to prevent its production as evidence. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Presidency Magistrate or Magistrate of the first class. |
| 205 | False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

# SCHEDULE II—*continued.*

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 206 | Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree. | Shall not arrest without warrant. | Warrant | Bailable | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 207 | Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 208 | Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied. | Ditto | Ditto | Ditto | Ditto | Ditto | Presidency Magistrate or Magistrate of the first class. |
| 209 | False claim in a Court of Justice. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 2 years and fine. | Ditto. |

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| 210 | Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 211 | False charge of offence made with intent to injure. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| | If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 212 | Harbouring an offender, if the offence be capital. | May arrest without warrant. | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 5 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If punishable with transportation for life, or with imprisonment for 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Ditto. |
| | If punishable with imprisonment for 1 year and not for 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |

## SCHEDULE II—*continued.*

### CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

ALV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 213 | Taking gift, &c., to screen an offender from punishment, if the offence be capital. | Shall not arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session. |
| | If punishable with transportation for life or with imprisonment for 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 214 | Offering gift or restoration of property in consideration of screening offender, if the offence be capital. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session. |

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| | If punishable with transportation for life or with imprisonment for 10 years. | Ditto . . | Ditto . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 215 | Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |
| 216 | Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital. | May arrest without warrant. | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If punishable with transportation for life, or with imprisonment for 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years, with or without fine. | Ditto. |

# SCHEDULE II—*continued.*

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | If with imprisonment for 1 year, and not for 10 years. | May arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 217 | Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture. | Shall not arrest without warrant. | Summons . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 218 | Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture. | Ditto . . | Warrant . | Ditto . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session. |
| 219 | Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |

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| | or decision which he knows to be contrary to law. | | | | | | |
| 220 | Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 221 | Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years, with or without fine. | Ditto. |
| | If punishable with transportation for life, or imprisonment for 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years, with or without fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years, with or without fine. | Presidency Magistrate or Magistrate of the first or second class. |
| 222 | Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice if under sentence of death. | Ditto . . | Ditto . . | Not bailable | Ditto . | Transportation for life, or imprisonment of either description for 14 years, with or without fine. | Court of Session. |

# SCHEDULE II—*continued.*

## CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

XLV of 1860

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| | If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards. | Shall not arrest without warrant. | Warrant | Not bailable | Not compoundable. | Imprisonment of either description for 7 years, with or without fine. | Court of Session. |
| | If under sentence of imprisonment for less than 10 years; or lawfully committed to custody. | Ditto | Ditto | Bailable | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 223 | Escape from confinement negligently suffered by a public servant. | Ditto | Summons | Ditto | Ditto | Simple imprisonment for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 224 | Resistance or obstruction by a person to his lawful apprehension, | May arrest without warrant. | Warrant | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |

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| 225 | Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . , . | Ditto. |
| | If charged with an offence punishable with transportation for life, or imprisonment for 10 years. | Ditto . . | Ditto . . | Not bailable | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If charged with a capital offence. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session. |
| | If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| | If under sentence of death | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 225A | Escape, or attempt to escape, from custody for failing to furnish security for good behaviour. | Ditto . . | Ditto . . | Bailable . | Ditto . . | Imprisonment of either description for one year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

## SCHEDULE II—*continued.*

### CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 226 | Unlawful return from transportation. | May arrest without warrant. | Warrant . | Not bailable . | Not compoundable. | Transportation for life, and fine and rigorous imprisonment for 3 years before transportation. | Court of Session. |
| 227 | Violation of condition of remission of punishment. | Shall not arrest without warrant. | Summons . | Ditto . . | Ditto . . | Punishment of original sentence, or, if part of the punishment has been undergone, the residue. | The Court by which the original offence was triable. |
| 228 | Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding. | Ditto . . | Ditto . . | Bailable . | Ditto . . | Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV. |
| 229 | Personation of a juror or assessor. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMEMT STAMPS.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 231 | Counterfeiting, or performing any part of the process of counterfeiting, coin. | May arrest without warrant. | Warrant . | Warrant . | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 232 | Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin. | Ditto . | Ditto . . | Ditto . . | Ditto . . | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| 233 | Making, buying or selling instrument for the purpose of counterfeiting coin. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 234 | Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 235 | Possession of instrument or material for the purpose of using the same for counterfeiting coin. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If Queen's coin . . | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Court of Session. |

## SCHEDULE II—*continued.*

### CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*continued.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the Police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 236 | Abetting in British India the counterfeiting out of British India of coin. | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | The punishment provided for abetting the counterfeiting of such coin within British India. | Court of Session. |
| 237 | Import or export of counterfeit coin, knowing the same to be counterfeit. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 238 | Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |
| 239 | Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 5 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

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| 240 | The same with respect to the Queen's coin. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 241 | Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 242 | Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 243 | Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 244 | Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Court of Session. |
| 245 | Unlawfully taking from a Mint any coining instrument. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |

XLV of 1860.

## SCHEDULE II—*continued.*

### CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*continued.*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 246 | Fraudulently diminishing the weight or altering the composition of any coin. | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 247 | Fraudulently diminishing the weight or altering the composition of the Queen's coin. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 248 | Altering appearance of any coin with intent that it shall pass as a coin of a different description. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Ditto. |
| 249 | Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 250 | Delivery to another of coin possessed with the knowledge that it is altered. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 5 years and fine. | Ditto. |

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| 251 | Delivery of Queen's coin possessed with the knowledge that it is altered. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 252 | Possession of altered coin by a person who knew it to be altered when he became possessed thereof. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 253 | Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 5 years and fine. | Ditto. |
| 254 | Delivery to another of coin as genuine which when first possessed, the deliverer did not know to be altered. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine of ten times the value of the coin. | Presidency Magistrate or Magistrate of the first or second class. |
| 255 | Counterfeiting a Government stamp. | Ditto . . | Ditto . . | Bailable . | Ditto . | Transportation for life, or imprisonment of either description for 10 years, and fine. | Court of Session. |
| 256 | Having possession of an instrument or material for the purpose of counterfeiting a Government stamp. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 257 | Making, buying or selling instrument for the purpose of counterfeiting a Government stamp. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |

## SCHEDULE II—*continued.*

### CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 258 | Sale of counterfeit Government stamp. | May arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 259 | Having possession of a counterfeit Government stamp. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 260 | Using as genuine a Government stamp known to be counterfeit. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 261 | Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |

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| 262 | Using a Government stamp known to have been before used. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 263 | Erasure of mark denoting that stamp has been used. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

## CHAPTER XIII.—OFFENCES RELATING TO WEIGHTS AND MEASURES.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 264 | Fraudulent use of false instrument for weighing. | Shall not arrest without warrant. | Summons . | Bailable . | Not compoundable. | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 265 | Fraudulent use of false weight or measure. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 266 | Being in possession of false weights or measures for fraudulent use. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 267 | Making or selling false weights or measures for fraudulent use. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Ditto . . . . | Ditto. |

(*Schedule II.—Tabular Statement of Offences. Chapter XIV.—Offences affecting the public health, safety, convenience, decency and morals.*)

## SCHEDULE II—*continued.*

### CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 269 | Negligently doing any act known to be likely to spread infection of any disease dangerous to life. | May arrest without warrant. | Summons . | Bailable . | Not compoundable. | Imprisonment of either description for 6 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 270 | Malignantly doing any act known to be likely to spread infection of any disease dangerous to life. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 271 | Knowingly disobeying any quarantine rule. | Shall not arrest without warrant. | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 6 months, or fine, or both. | Ditto. |
| 272 | Adulterating food or drink intended for sale, so as to make the same noxious. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 273 | Selling any food or drink as food and drink knowing the same to be noxious. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Ditto . . . . | Ditto. |
| 274 | Adulterating any drug or medical preparation in- | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Ditto . . . . | Ditto. |

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| | tended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious. | | | | | | |
| 275 | Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Ditto . . . . | Ditto. |
| 276 | Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Ditto . . . . | Ditto. |
| 277 | Defiling the water of a public spring or reservoir. | May arrest without warrant. | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |
| 278 | Making atmosphere noxious to health. | Shall not arrest without warrant. | Ditto . . | Ditto . . | Ditto . . | Fine of 500 rupees . | Ditto. |
| 279 | Driving or riding on a public way so rashly or negligently as to endanger human life, &c. | May arrest without warrant. | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 280 | Navigating any vessel so rashly or negligenty as to endanger human life, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . . | Presidency Magistrate or Magistrate of the first or second class. |

## SCHEDULE II—*continued.*

### CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—*continued.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 281 | Exhibition of a false light, mark or buoy. | May arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 7 years, or fine, or both. | Court of Session. |
| 282 | Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life. | Ditto . . | Summons . | Ditto . | Ditto . | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 283 | Causing danger, obstruction or injury in any public way or line of navigation. | Ditto . . | Ditto . . | Ditto . | Ditto . | Fine of 200 rupees . | Ditto. |
| 284 | Dealing with any poisonous substance so as to endanger human life, &c. | Shall not arrest without warrant. | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both. | Ditto. |
| 285 | Dealing with fire or any combustible matter so as to endanger human life, &c. | May arrest without warrant. | Ditto . . | Ditto . | Ditto . | Ditto . . . | Any Magistrate. |

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| 286 | So dealing with any explosive substance. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 287 | So dealing with any machinery. | Shall not arrest without warrant. | Ditto . . | Ditto . | Ditto . | Ditto . . . | Presidency Magistrate, or Magistrate of the first or second class. |
| 288 | A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 289 | A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal. | May arrest without warrant. | Ditto . . | Ditto . | Ditto . | Ditto . . . | Any Magistrate. |
| 290 | Committing a public nuisance. | Shall not arrest without warrant. | Ditto . . | Ditto . | Ditto . | Fine of 200 rupees. | Ditto. |
| 291 | Continuance of nuisance after injunction to discontinue. | May arrest without warrant. | Ditto . | Ditto . | Ditto . | Simple imprisonment for 6 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

## SCHEDULE II—*continued.*

### CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—*concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 292 | Sale, &c., of obscene books, &c. | May arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 3 months, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 293 | Having in possession obscene books, &c., for sale or exhibition. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 294 | Obscene songs . . | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 294A | Keeping a lottery-office . | Shall not arrest without warrant. | Summons . | Ditto . | Ditto . | Imprisonment of either description for 6 months, or fine, or both. | Any Magistrate. |
| | Publishing proposals relating to lotteries. | Ditto . . | Ditto . . | Ditto . | Ditto . | Fine of 1,000 rupees . | Ditto |

### CHAPTER XV.—OFFENCES RELATING TO RELIGION.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 295 | Destroying, damaging, or defiling a place of worship or sacred object | May arrest without warrant. | Summons . | Bailable . | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magis- |

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|---|---|---|---|---|---|---|---|
| | with intent to insult the religion of any class of persons. | | | | | | trate of the first or second class. |
| 296 | Causing a disturbance to an assembly engaged in religious worship. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 1 year, or fine, or both. | Ditto. |
| 297 | Trespassing in place of worship or sepulchre, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto . |
| 298 | Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling. | Shall not arrest without warrant. | Ditto . . | Ditto . | Compoun d-able. | Ditto . . . | Ditto . |

## CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

*Of Offences affecting Life.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 302 | Murder . . . | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Death, or transportation for life, and fine. | Court of Session. |

## SCHEDULE II—*continued.*

### CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

*Of Offences affecting Life—concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 303 | Murder by a person under sentence of transportation for life. | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Death . . . | Court of Session. |
| 304 | Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| | If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years, or fine, or both. | Ditto. |
| 304A | Causing death by rash or negligent act. | Ditto . . | Ditto . . | Bailable . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 305 | Abetment of suicide committed by a child, or in- | Ditto . . | Ditto . . | Not bailable | Ditto . | Death, or transportation for life, or imprisonment | Court of Session. |

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| | sane or delirious person, or an idiot, or a person intoxicated. | | | | | for 10 years, and fine. | |
| 306 | Abetting the commission of suicide. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 307 | Attempt to murder . | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| | If such act cause hurt to any person. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or as above. | Ditto. |
| | Attempt by life-convict to murder, if hurt is caused. | Ditto . . | Ditto . . | Ditto . | Ditto . | Death, or as above . | Ditto. |
| 308 | Attempt to commit culpable homicide. | Ditto . . | Ditto . . | Bailable . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |
| | If such act cause hurt to any person. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 309 | Attempt to commit suicide | Ditto . . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 311 | Being a thug . . | Ditto . . | Ditto . . | Not bailable | Ditto . | Transportation for life and fine. | Court of Session. |

(*Schedule II.—Tabular Statement of Offences. Chapter XVI.—Offences affecting the Human Body. Of the causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.*)

# SCHEDULE II—*continued.*

## CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

*Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.*

| LV of 1860. 1 Section. | 2 Offence. | 3 Whether the police may arrest without warrant or not. | 4 Whether a warrant or a summons shall ordinarily issue in the first instance. | 5 Whether bailable or not. | 6 Whether compoundable or not. | 7 Punishment under the Indian Penal Code. | 8 By what Court triable. |
|---|---|---|---|---|---|---|---|
| 312 | Causing miscarriage . | Shall not arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session. |
| | If the woman be quick with child. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 313 | Causing miscarriage without woman's consent. | Ditto . . | Ditto . . | Not bailable | Ditto . | Transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |
| 314 | Death caused by an act done with intent to cause miscarriage. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| | If act done without woman's consent. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or as above. | Ditto. |
| 315 | Act done with intent to prevent a child being born alive, or to cause it to die after its birth. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years, or fine, or both. | Ditto. |

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|---|---|---|---|---|---|---|---|
| 316 | Causing death of a quick unborn child by an act amounting to culpable homicide. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 317 | Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it. | May arrest without warrant. | Ditto . . | Bailable . | Ditto . | Imprisonment of either description for 7 years, or fine, or both. | Ditto. |
| 318 | Concealment of birth by secret disposal of dead body. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| | *Of Hurt.* | | | | | | |
| 323 | Voluntarily causing hurt. | Shall not arrest without warrant. | Summons . | Bailable . | Compoundable. | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Any Magistrate. |
| 324 | Voluntarily causing hurt by dangerous weapons or means. | May arrest without warrant. | Ditto . . | Ditto . | Compoundable when permission is given by the Court before which a prosecution is pending. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

## SCHEDULE II—*continued.*

### CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

### *Of Hurt*—continued.

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 325 | Voluntarily causing grievous hurt. | May arrest without warrant. | Summons . | Bailable . | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 326 | Voluntarily causing grievous hurt by dangerous weapons or means. | Ditto . . | Ditto . . | Not bailable. | Ditto . | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 327 | Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence. | Ditto . . | Warrant . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Court of Session. |
| 328 | Administering stupefying | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |

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| | drug with intent to cause hurt, &c. | | | | | | |
| 329 | Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |
| 330 | Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c. | Ditto . . | Ditto . . | Bailable . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 331 | Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c. | Ditto . . | Ditto . . | Not bailable. | Ditto . . . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 332 | Voluntarily causing hurt to deter public servant from his duty. | Ditto . . | Ditto . . | Bailable . | Ditto . . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 333 | Voluntarily causing grievous hurt to deter public servant from his duty. | Ditto . . | Ditto . . | Not bailable. | Ditto . . | Imprisonment of either description for 10 years and fine. | Court of Session. |

# SCHEDULE II—*continued.*

## CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

### *Of Hurt*—concluded.

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 334 | Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation. | Shall not arrest without warrant. | Summons . . | Bailable . | Compoundable. | Imprisonment of either description for 1 month, or fine of 500 rupees, or both. | Any Magistrate. |
| 335 | Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation. | May arrest without warrant. | Ditto . . | Ditto . . | Compoundable when permission is given by the Court before which a prosecution is pending. | Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 336 | Doing any act which endangers human life or the personal safety of others. | Ditto . . | Ditto . . | Ditto . . | Not compoundable. | Imprisonment of either description for 3 months, or fine of 250 rupees, or both. | Any Magistrate. |
| 337 | Causing hurt by an act which endangers human life, &c. | Ditto . . | Ditto . . | Ditto . . | Compoundable when permission is given by | Imprisonment of either description for 6 months or fine of 500 rupees, or both. | Presidency Magistrate or Magistrate of the |

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| | | | | | the Court before which a prosecution is pending. | | first or second class. |
| 338 | Causing grievous hurt by an act which endangers human life, &c. | Ditto . . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both. | Ditto. |

*Of Wrongful Restraint and Wrongful Confinement.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 341 | Wrongfully restraining any person. | May arrest without warrant. | Summons . | Bailable . | Compoundable. . | Simple imprisonment for 1 month, or fine of 500 rupees, or both. | Any Magistrate. |
| 342 | Wrongfully confining any person. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 343 | Wrongfully confining for three or more days. | Ditto . . | Ditto . . | Ditto . | Not compoundable. | Imprisonment of either description for 2 years and fine. | Ditto. |
| 344 | Wrongfully confining for ten or more days. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

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## SCHEDULE II—*continued.*

### CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

### *Of Wrongful Restraint and Wrongful Confinement*—concluded.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code | By what Court triable. |
| 345 | Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation. | Shall not arrest without warrant. | Summons. | Bailable . | Not compoundable. | Imprisonment of either description for 2 years, in addition to imprisonment under any other section. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 346 | Wrongful confinement in secret. | May arrest without warrant. | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 347 | Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Ditto. |
| 348 | Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Court of Session, Presidency Magistrate or Magistrate of the first class. |

*Of Criminal Force and Assault.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 352 | Assault or use of criminal force otherwise than on grave provocation. | Shall not arrest without warrant. | Summons . | Bailable . | Compoundable. | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |
| 353 | Assault or use of criminal force to deter a public servant from discharge of his duty. | May arrest without warrant. | Warrant . | Ditto . | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 354 | Assault or use of criminal force to a woman with intent to outrage her modesty. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 355 | Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation. | Shall not arrest without warrant. | Summons . | Ditto . | Compoundable. | Ditto . . . | Ditto. |
| 356 | Assault or criminal force in attempt to commit theft of property worn or carried by a person. | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Ditto . . . | Any Magistrate. |
| 357 | Assault or use of criminal force in attempt wrongfully to confine a person. | Ditto . | Ditto . . | Bailable . | Ditto | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Ditto. |
| 358 | Assault or use of criminal force on grave and sudden provocation. | Shall not arrest without warrant. | Summons . | Ditto . | Compoundable. | Simple imprisonment for 1 month, or fine of 200 rupees, or both. | Ditto. |

## SCHEDULE II—*continued.*

### CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

*Of Kidnapping, Abduction, Slavery and Forced Labour.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 363 | Kidnapping . . . | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 364 | Kidnapping or abducting in order to murder. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or rigorous imprisonment for 10 years and fine. | Court of Session. |
| 365 | Kidnapping or abducting with intent secretly and wrongfully to confine a person. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 366 | Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 367 | Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c. | Ditto . . | Ditto . . | Ditto . . | Ditto . | Ditto . . . | Ditto. |

(*Schedule II.—Tabular Statement of Offences. Chapter XVI.—Offences affecting the Human Body. Of Kidnapping, Abduction, Slavery and Forced Labour.*)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 368 | Concealing or keeping in confinement a kidnapped person. | Ditto . . | Ditto . . | Ditto . . | Ditto . | Punishment for kidnapping or abduction. | Ditto. |
| 369 | Kidnapping or abducting a child with intent to take property from the person of such child. | Ditto . . | Ditto . . | Ditto . . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 370 | Buying or disposing of any person as a slave. | Shall not arrest without warrant. | Ditto . . | Bailable . | Ditto . | Ditto . . . | Ditto. |
| 371 | Habitual dealing in slaves | May arrest without warrant. | Ditto . . | Not bailable | Ditto . | Transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |
| 372 | Selling or letting to hire a minor for purposes of prostitution, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 373 | Buying or obtaining possession of a minor for the same purposes. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 374 | Unlawful compulsory labour. | Ditto . . | Ditto . . | Bailable . | Compoundable. | Imprisonment of either description for 1 year, or fine, or both. | Any Magistrate. |

(*Schedule II.—Tabular Statement of Offences. Chapter XVI.—Offences affecting the Human Body. Of Rape. Of Unnatural Offences. Chapter XVII.—Offences against Property. Of Theft.*)

XLV of 1860.

## SCHEDULE II—*continued.*

### CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*concluded.*

*Of Rape.*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 376 | Rape . . . . | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |

*Of Unnatural Offences.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 377 | Unnatural offences . . | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |

### CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

*Of Theft.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 379 | Theft . . . . | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Any Magistrate. |
| 380 | Theft in a building, tent or vessel. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 381 | Theft by clerk or servant of property in possession of master or employer. | Ditto | Ditto | Ditto | Ditto | Ditto | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 382 | Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it. | Ditto | Ditto | Ditto | Ditto | Rigorous imprisonment for 10 years and fine. | Court of Session. |

*Of Extortion.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 384 | Extortion | Shall not arrest without warrant. | Warrant | Bailable | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |
| 385 | Putting or attempting to put in fear of injury, in order to commit extortion. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |

# SCHEDULE II—*continued.*

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

### *Of Extortion—concluded.*

XLV of 1860.

| 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 386 | Extortion by putting a person in fear of death or grievous hurt. | Shall not arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Imprisonment of either description for 10 years and fine. | Court of Session. |
| 387 | Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 388 | Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| | If the offence threatened be an unnatural offence. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life . | Ditto. |
| 389 | Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | commit extortion. | | | | | | |
| | If the offence be an unnatural offence. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life . | Ditto. |

*Of Robbery and Dacoity.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 392 | Robbery . . . | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Rigorous imprisonment for 10 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If committed on the highway between sunset and sunrise. | Ditto . . | Ditto . . | Ditto . | Ditto . | Rigorous imprisonment for 14 years and fine. | Ditto. |
| 393 | Attempt to commit robbery. | Ditto . . | Ditto . . | Ditto . | Ditto . | Rigorous imprisonment for 7 years and fine. | Ditto. |
| 394 | Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or rigorous imprisonment for 10 years and fine. | Ditto. |
| 395 | Dacoity . . . | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Court of Session. |

# SCHEDULE II—*continued.*

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

### *Of Robbery and Dacoity*—concluded.

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 396 | Murder in dacoity . . | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Death, transportation for life, or rigorous imprisonment for 10 years and fine. | Court of Session. |
| 397 | Robbery or dacoity, with attempt to cause death or grievous hurt. | Ditto . . | Ditto . . | Ditto . | Ditto . | Rigorous imprisonment for not less than 7 years. | Ditto. |
| 398 | Attempt to commit robbery or dacoity when armed with deadly weapon. | Ditto . . | Ditto . . | Ditto. . | Ditto. . | Ditto. . . . | Ditto. |
| 399 | Making preparation to commit dacoity. | Ditto . . | Ditto . . | Ditto. . | Ditto. . | Rigorous imprisonment for 10 years and fine. | Ditto. |
| 400 | Belonging to a gang of persons associated for the purpose of habitually committing dacoity. | Ditto . . | Ditto . . | Ditto. . | Ditto. . | Transportation for life, or rigorous imprisonment for 10 years and fine. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 401 | Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Rigorous imprisonment for 7 years and fine. | Ditto. |
| 402 | Being one of five or more persons assembled for the purpose of committing dacoity. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Ditto . . . . | Ditto. |

*Of Criminal Misappropriation of Property.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 403 | Dishonest misappropriation of moveable property, or converting it to one's own use. | Shall not arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Any Magistrate. |
| 404 | Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 405 | If by clerk or person employed by deceased. | Ditto . . | Ditto . . | Ditto . . | Ditto . . | Imprisonment of either description for 7 years and fine. | Ditto. |

# SCHEDULE II—*continued.*

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

### *Of Criminal Breach of Trust.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 406 | Criminal breach of trust. | May arrest without warrant. | Warrant | Not bailable | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 407 | Criminal breach of trust by a carrier, wharfinger, &c. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 408 | Criminal breach of trust by a clerk or servant. | Ditto | Ditto | Ditto | Ditto | Ditto | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 409 | Criminal breach of trust by public servant or by banker, merchant or agent, &c. | Shall not arrest without warrant. | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | *Of the Receiving of Stolen Property.* | | | | | | |
| 411 | Dishonestly receiving stolen property, knowing it to be stolen. | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 412 | Dishonestly receiving stolen property, knowing that it was obtained by dacoity. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or rigorous imprisonment for 10 years and fine. | Court of Session. |
| 413 | Habitually dealing in stolen property. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |
| 414 | Assisting in concealment or disposal of stolen property, knowing it to be stolen. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

XLV of 1860.

# SCHEDULE II—*continued.*

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

### *Of Cheating.*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 417 | Cheating . . . | Shall not arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 418 | Cheating a person whose interest the offender was bound, either by law, or by legal contract, to protect. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 419 | Cheating by personation . | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 420 | Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

*Of Fraudulent Deeds and Dispositions of Property.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 421 | Fraudulent removal or concealment of property, &c., to prevent distribution among creditors. | Shall not arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 422 | Fraudulently preventing from being made available for his creditors a debt or demand due to the offender. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 423 | Fraudulent execution of deed of transfer containing a false statement of consideration. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 424 | Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |

*Of Mischief.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 426 | Mischief . . . | Shall not arrest without warrant. | Summons . | Bailable . | Compoundable when the only loss or damage caused is loss or damage to a private person. | Imprisonment of either description for 3 months, or fine, or both. | Any Magistrate. |

# SCHEDULE II—*continued.*

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

### *Of Mischief*—continued.

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 427 | Mischief, and thereby causing damage to the amount of 50 rupees or upwards. | Shall not arrest without warrant. | Warrant . | Bailable . | Compoundable when the only loss or damage caused is loss or damage to a private person. | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 428 | Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards. | May arrest without warrant. | Ditto . . | Ditto . | Not compoundable. | Ditto . . . | Ditto. |
| 429 | Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 5 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 430 | Mischief by causing dimi- | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | nution of supply of water for agricultural purposes, &c. | | | | | | |
| 431 | Mischief by injury to public road, bridge, navigable river or navigable channel, and rendering it impassable or less safe for travelling or conveying property. | Ditto . . | Ditto . . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 432 | Mischief by causing inundation or obstruction to public drainage, attended with damage. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 433 | Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years, or fine, or both. | Court of Session. |
| 434 | Mischief by destroying or moving, &c., a landmark fixed by public authority. | Shall not arrest without warrant. | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 435 | Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards. | May arrest without warrant. | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session. |

XLV of 1860.

## SCHEDULE II.—*continued.*

### CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

### *Of Mischief*—concluded.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 436 | Mischief by fire or explosive substance with intent to destroy a house, &c. | May arrest without warrant. | Warrant . | Not bailable . | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |
| 437 | Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 438 | The mischief described in the last section when committed by fire or any explosive substance. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 10 years and fine. | Ditto. |
| 439 | Running vessel ashore with intent to commit theft, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 440 | Mischief committed after preparation made for causing death or hurt, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 5 years and fine. | Ditto. |

*Of Criminal Trespass.*

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 447 | Criminal trespass . . | May arrest without warrant. | Summons . | Bailable . | Compoundable. | Imprisonment of either description for 3 months, or fine of 500 rupees, or both. | Any Magistrate. |
| 448 | House-trespass . . | Ditto . . | Warrant . | Ditto . | Ditto . . | Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both. | Ditto. |
| 449 | House-trespass in order to the commission of an offence punishable with death. | Ditto . . | Ditto . . | Not bailable. | Not compoundable. | Transportation for life, or rigorous imprisonment for 10 years and fine. | Court of Session. |
| 450 | House-trespass in order to the commission of an offence punishable with transportation for life. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 451 | House-trespass in order to the commission of an offence punishable with imprisonment. | Ditto . . | Ditto . . | Bailable . | Ditto . | Imprisonment of either description for 2 years and fine. | Any Magistrate. |
| | If the offence is theft . | Ditto . . | Ditto . . | Not bai labe | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

# SCHEDULE II—*continued.*

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

### *Of Criminal Trespass*—continued.

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 452 | House-trespass, having made preparation for causing hurt, assault, &c. | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Imprisonment of either description for 7 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 453 | Lurking house-trespass or house-breaking. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years and fine. | Presidency Magistrate or Magistrate of the first or second class. |
| 454 | Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| | If the offence is theft . | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | | | | | description for 10 years and fine. | |
| 455 | Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 456 | Lurking house-trespass or house-breaking by night. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 457 | Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 5 years and fine. | Ditto. |
| | If the offence is theft . | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 14 years and fine. | Ditto. |
| 458 | Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c. | Ditto . . | Ditto . . | Ditto | Ditto . | Ditto . . . | Court of Session, Presidency Magistrate or Magistrate of the first class. |

# SCHEDULE II—*continued.*

## CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*concluded.*

### *Of Criminal Trespass*—concluded.

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 459 | Grievous hurt caused whilst committing lurking house-trespass or house-breaking. | May arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Transportation for life, or imprisonment of either description for 10 years and fine. | Court of Session. |
| 460 | Death of grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 461 | Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property. | Ditto . . | Ditto . . | Bailable . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 462 | Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same. | Ditto . . | Ditto . . | Not bailable | Ditto . | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate, or Magistrate of the first or second class. |

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 465 | Forgery . . . | Shall not arrest without warrant. | Warrant . | Bailable . | Not compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Court of Session. |
| 466 | Forgery of a record of a Court of Justice or of a Register of births, &c., kept by a public servant. | Ditto . . | Ditto . . | Not bailable | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 467 | Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 10 years, and fine. | Ditto. |
| | When the valuable security is a promissory note of the Government of India. | May arrest without warrant. | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 468 | Forgery for the purpose of cheating. | Shall not arrest without warrant. | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 469 | Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose. | Ditto . . | Ditto . | Bailable . | Ditto . | Imprisonment of either description for 3 years and fine. | Ditto. |
| 471 | Using as genuine a forged document which is known to be forged. | Ditto . | Ditto . . | Ditto . | Ditto . | Punishment for forgery | Ditto. |
| | When the forged document is a promissory note of the Government of India. | May arrest without warrant. | Ditto . . | Not bailable | Ditto . | Ditto . . . | Ditto. |

## SCHEDULE II—*continued.*

### CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—*continued.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 472 | Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit. | Shall not arrest without warrant. | Warrant . | Not bailable | Not compoundable. | Transportation for life, or imprisonment of either description for 7 years and fine. | Court of Session. |
| 473 | Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 474 | Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the do- | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | cument is one of the description mentioned in section 466 of the Indian Penal Code. | | | | | | |
| | If the document is one of the description mentioned in section 467 of the Indian Penal Code. | Ditto . . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 7 years and fine. | Ditto. |
| 475 | Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 476 | Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 477 | Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c. | Ditto . . | Ditto . . | Ditto . | Ditto . | Transportation for life, or imprisonment of either description for 7 years and fine. | Ditto. |

XLV of 1860.

## SCHEDULE II—*continued.*

### CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—concluded.

*Of Trade and Property-marks.*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 482 | Using a false trade or property-mark with intent to deceive or injure any person. | Shall not arrest without warrant. | Warrant | Bailable | Not compoundable. | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 483 | Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 2 years, or fine, or both. | Ditto. |
| 484 | Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property. | Ditto | Summons | Ditto | Ditto | Imprisonment of either description for 3 years and fine. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 485 | Fraudulently making or having possession of any die, plate or other instrument for counterfeiting any public or | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Ditto. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | private property or trade-mark. | | | | | | |
| 486 | Knowingly selling goods marked with a counterfeit property or trade-mark. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 487 | Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 3 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 488 | Making use of any such false mark. | Ditto | Ditto | Ditto | Ditto | Ditto | Ditto. |
| 489 | Removing, destroying or defacing any property-mark with intent to cause injury. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

## CHAPTER XIX—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 490 | Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so. | Shall not arrest without warrant. | Summons | Bailable | Compoundable. | Imprisonment of either description for 1 month, or fine of 100 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |

# SCHEDULE II—*continued.*

## CHAPTER XIX—CRIMINAL BREACH OF CONTRACTS OF SERVICE—*concluded.*

XLV of 1860.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 491 | Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so. | Shall not arrest without warrant. | Summons | Bailable | Compoundable. | Imprisonment of either description for 3 months, or fine of 200 rupees, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 492 | Being bound by contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty. | Ditto | Ditto | Ditto | Ditto | Imprisonment of either description for 1 month, or fine of double the expense incurred, or both. | Ditto. |

## CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 493 | A man by deceit causing a woman not lawfully married to him, to believe that she is lawfully married to him, and to co- | Shall not arrest without warrant. | Warrant | Not bailable | Not compoundable. | Imprisonment of either description for 10 years and fine. | Court of Session. |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | habit with him in that belief. | | | | | | |
| 494 | Marrying again during the lifetime of a husband or wife. | Ditto . . | Ditto . . | Bailable . | Ditto . | Imprisonment of either description for 7 years and fine. | Court of Session. |
| 495 | Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted. | Ditto . . | Ditto . . | Not bailable | Ditto . | Imprisonment of either description for 10 years and fine. | Ditto. |
| 496 | A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 7 years and fine. | Ditto. |
| 497 | Adultery . . . | Ditto . . | Ditto . . | Bailable . | Compoundable. | Imprisonment of either description for 5 years, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |
| 498 | Enticing or taking away or detaining with a criminal intent a married woman. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |

XLV of 1860.

## SCHEDULE II—*continued.*

### CHAPTER XXI.—DEFAMATION.

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 500 | Defamation . . . | Shall not arrest without warrant. | Warrant . | Bailable . | Compoundable. | Simple imprisonment for 2 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 501 | Printing or engraving matter knowing it to be defamatory. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |
| 502 | Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter. | Ditto . . | Ditto . . | Ditto . | Ditto . | Ditto . . . | Ditto. |

### CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 504 | Insult intended to provoke a breach of the peace. | Shall not arrest without warrant. | Warrant . | Bailable . | Compoundable. | Imprisonment of either description for 2 years, or fine, or both. | Any Magistrate. |
| 505 | False statement, rumour, | Ditto . . | Ditto . . | Not bailable | Not com- | Ditto . . . . | Presidency |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | &c, circulated with intent to cause mutiny or offence against the public peace. | | | | poundable. | | Magistrate or Magistrate of the first or second class. |
| 506 | Criminal intimidation . | Ditto . . | Ditto . . | Bailable . | Compoundable. | Ditto . . . . | Ditto. |
| | If threat be to cause death or grievous hurt, &c. | Ditto . . | Ditto . . | Ditto . | Not compoundable. | Imprisonment of either description for 7 years, or fine, or both. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 507 | Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes. | Ditto . . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 2 years in addition to the punishment under above section. | Ditto. |
| 508 | Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure. | Ditto . | Ditto . . | Ditto . | Ditto . | Imprisonment of either description for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first or second class. |
| 509 | Uttering any word or making any gesture intended to insult the modesty of a woman, &c. | Ditto . | Ditto . . | Ditto . | Ditto . | Simple imprisonment for 1 year, or fine, or both. | Presidency Magistrate or Magistrate of the first class. |

XLV of 1860.

# SCHEDULE II—*concluded.*

## CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE—*concluded.*

| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|
| Section. | Offence. | Whether the police may arrest without warrant or not. | Whether a warrant or a summons shall ordinarily issue in the first instance. | Whether bailable or not. | Whether compoundable or not. | Punishment under the Indian Penal Code. | By what Court triable. |
| 510 | Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person. | Shall not arrest without warrant. | Warrant | Bailable | Not compoundable. | Simple imprisonment for 24 hours, or fine of 10 rupees, or both. | Any Magistrate. |

## CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 511 | Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence. | According as the offence is one in respect of which the police may arrest without warrant or not. | According as the offence is one in respect of which a summons or warrant shall ordinarily issue. | According as the offence contemplated by the offender is bailable or not. | Compoundable when the offence attempted is compoundable. | Transportation or imprisonment not exceeding half of the longest term and of any description, provided for the offence, or fine, or both. | The Court by which the offence attempted is triable. |

## OFFENCES AGAINST OTHER LAWS.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | If punishable with death, transportation or imprisonment for 7 years or upwards. | May arrest without warrant. | Warrant | Not bailable | Not compoundable. | ..... | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | If punishable with imprisonment for 3 years and upwards but less than seven. | Ditto . . | Ditto . . | Ditto . Except in cases under the Indian Arms Act, 1878, section 19, which shall be bailable. | Ditto . | ..... | According to the provisions of section 29 of this Code. |
| XI of 1878. | If punishable with imprisonment for less than three years. | Shall not arrest without warrant. | Summons . | Bailable . | Ditto . | ..... | |
| | If punishable with fine only. | Ditto . . | Ditto . . | Ditto . | Ditto . | ..... | |

# SCHEDULE III.*

## ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

### *I.—Ordinary Powers of a Magistrate of the Third Class.*

(1) Power to arrest, or direct the arrest in his presence of, an offender, section 65.
(2) Power to endorse a warrant, or to order the removal of an accused person arrested under a warrant, sections 83, 84 and 86.
(3) Power to issue proclamations in cases judicially before him, section 87.
(4) Power to attach and sell property in cases judicially before him, section 88.
(5) Power to restore attached property, section 89.
(6) Power to issue search-warrant, section 96.
(7) Power to endorse a search-warrant and order delivery of thing found, section 99.
(8) Power to record statements or confessions during a police investigation, section 164.
(9) Power to authorize detention of a person during a police investigation, section 167.
(10) Power to detain an offender found in Court, section 351.
(11) Power to sell perishable property of a suspected character, section 525.

### *II.—Ordinary Powers of a Magistrate of the Second Class.*

(1) The ordinary powers of a Magistrate of the third class.
(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

### *III.—Ordinary Powers of a Magistrate of the First Class.*

(1) The ordinary powers of a Magistrate of the second class.
(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
(4) Power to require security to keep the peace, section 107.
(5) Power to require security for good behaviour, section 109.
(6) Power to make orders, &c., in possession cases, sections 145, 146 and 147.
(7) Power to commit for trial, section 206.
(8) Power to stop proceedings when no complainant, section 249.
(9) Power to make orders of maintenance, sections 488 and 489.

### *IV.—Ordinary Powers of a Sub-divisional Magistrate.*

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(3) Power to make orders as to local nuisances, section 133.
(4) Power to make orders prohibiting repetitions of nuisances, section 143.
(5) Power to make orders under section 144.
(6) Power to hold inquests, section 174.
(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(8) Power to entertain complaints, section 191.
(9) Power to receive police-reports, section 191.
(10) Power to entertain cases without complaint, section 191.
(11) Power to transfer cases to a Subordinate Magistrate, section 192.
(12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(13) Power to sell property alleged or suspected to have been stolen, &c., section 524.
(14) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

### *V.—Ordinary Powers of a District Magistrate.*

(1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
(2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.

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* See section 36 of the Act, *supra*.

## SCHEDULE III—*concluded.*

(3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
(4) Power to cancel bond for keeping the peace, section 125.
(5) Power to try summarily, section 260.
(6) Power to quash convictions in certain cases, section 350.
(7) Power to hear appeals from orders requiring security for good behaviour, section 406.
(8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
(9) Power to call for records, section 435.
(10) Power to revise orders passed under section 514, section 515.

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## SCHEDULE IV.[a]

### ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

| | | |
|---|---|---|
| POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED. | BY THE LOCAL GOVERNMENT. | (1) Power to require security for good behaviour, section 110:<br>(2) Power to make orders as to local nuisances, section 133:<br>(3) Power to make orders prohibiting repetitions of nuisances, section 143:<br>(4) Power to make orders under section 144:<br>(5) Power to hold inquests, section 174:<br>(6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186:<br>(7) Power to take cognizance of offences upon complaint, section 191:<br>(8) Power to take cognizance of offences upon police reports, section 191:<br>(9) Power to take cognizance of offences upon information, section 191:<br>(10) Power to try summarily, section 260:<br>(11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407:<br>(12) Power to sell property alleged or suspected to have been stolen, &c., section 524. |

[a] See sections 37 and 38 of the Act, *supra*.

## SCHEDULE IV—*continued.*

| | | |
|---|---|---|
| POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED—*contd.* | BY THE DISTRICT MAGISTRATE | (1) Power to make orders prohibiting repetitions of nuisances, section 143:<br>(2) Power to make orders under section 144:<br>(3) Power to hold inquests, section 174:<br>(4) Power to take cognizance of offences upon complaint, section 191:<br>(5) Power to take cognizance of offences upon police reports, section 191:<br>(6) Power to transfer cases, section 192: |
| POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED. | BY THE LOCAL GOVERNMENT. | (1) Power to pass sentences of whipping, section 32:<br>(2) Power to make orders prohibiting repetitions of nuisances, section 143:<br>(3) Power to make orders under section 144:<br>(4) Power to hold inquests, section 174:<br>(5) Power to take cognizance of offences upon complaint, section 191:<br>(6) Power to take cognizance of offences upon police reports, section 191:<br>(7) Power to take cognizance of offences upon information, section 191:<br>(8) Power to commit for trial, section 206: |
| | BY THE DISTRICT MAGISTRATE. | (1) Power to make orders prohibiting repetitions of nuisances, section 142:<br>(2) Power to make orders under section 144:<br>(3) Power to hold inquests, section 174:<br>(4) Power to take cognizance of offences upon complaint, section 191:<br>(5) Power to take cognizance of offences upon police reports, section 191: |
| POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED. | BY THE LOCAL GOVERNMENT. | (1) Power to make orders prohibiting repetitions of nuisances, section 143:<br>(2) Power to make orders under section 144:<br>(3) Power to hold inquests, section 174: |

## SCHEDULE IV—*concluded.*

| | | |
|---|---|---|
| POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED—*contd.* | BY THE LOCAL GOVERNMENT—*contd.* | (4) Power to take cognizance of offences upon complaint, section 191 · (5) Power to take cognizance of offences upon police reports, section 191 : (6) Power to commit for trial, section 206 : |
| | BY THE DISTRICT MAGISTRATE. | (1) Power to make orders prohibiting repetitions of nuisances, section 143 : (2) Power to make orders under section 144 (3) Power to hold inquests, section 174 : (4) Power to take cognizance of offences upon complaint, section 191 : (5) Power to take cognizance of offences upon police reports, section 191 : |
| POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED. | BY THE LOCAL GOVERNMENT. | Power to call for records, section 435. |

## SCHEDULE V.[a]

### FORMS.

#### I.—SUMMONS TO AN ACCUSED PERSON.

(*See section 68.*)

To of .

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*) before the (*Magistrate*) of , on the day of . Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

#### II.—WARRANT OF ARREST.

(*See section 75*)

To (*name and designation of the person or persons who is or are to execute the warrant.*)

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said , and to produce him before me. Herein fail not.

Dated this day of , 18 .

(*Seal*) (*Signature.*)

[a] See section 554 of the Act, *supra.*

## SCHEDULE V—*continued.*

(*See section 76.*)

*This warrant may be endorsed as follows :—*

If the said shall give bail himself in the sum of , with one surety in the sum of (*or* two sureties each in the sum of ), to attend before me on the day of and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of , 18 .

(*Signature.*)

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### III.—Bond and Bail-bond after Arrest under a Warrant.

(*See section 86.*)

I, (*name*) of , being brought before the District Magistrate of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

I do hereby declare myself surety for the abovenamed of , that he shall attend before in the Court of on the day of next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 . (*Signature.*)

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### IV.—Proclamation requiring the Appearance of a Person Accused.

(*See section 87.*)

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant); XLV of 1860.

Proclamation is hereby made that the said of is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint within days from this date.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

---

### V.—Proclamation requiring the Attendance of a Witness.

(*See section 87.*)

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant);

## SCHEDULE V—*continued.*

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

### VI.—Order of Attachment to compel the Attendance of a Witness.

(*See section 88.*)

To the Police officer in charge of the Police-station at

Whereas a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees which you may find within the District of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

### Order of Attachment to Compel the Appearance of a Person Accused.

(*See section 88.*)

To (*name and designation of the person or persons who is or are to execute the warrant.*)

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said *name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or* town) of , in the District of , *viz.*, , and an order has been made for the attachment thereof;

XLV of 1860.

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

### Order authorizing an Attachment by the Deputy Commissioner as Collector.

(*See section 88.*)

To the Deputy Commissioner of the District of

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest

XLV of 1860.

## SCHEDULE V—*continued.*

thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town) of in the District of .

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 18 .

(*Seal.*) (*Signature*

---

### VII.—Warrant in the first instance to bring up a Witness.

(*See section 90.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant.*)

Whereas complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to arrest the said (*name*) and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

---

### VIII.—Warrant to search after Information of a particular Offence.

(*See section 96.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant.*)

Whereas information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or* about to be made) into the said offence (*or* suspected offence);

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

---

### IX.—Warrant to search suspected Place of Deposit.

(*See section 98.*)

To (*name and designation of a Police-officer above the rank of a Constable.*)

Whereas information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or* sale) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

## SCHEDULE V—*continued.*

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or* documents, *or* stamps, *or* seals, *or* coins, *as the case may be*)—[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, *or* counterfeit stamps, *or* false seals, *or* counterfeit coin, (*as the case may be*) ] and forthwith to bring before this Court such of the said things as may be taken possession of; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### X.—Bond to keep the Peace.

(*See section 106.*)

Whereas I, (*name*), inhabitant of (*place*) have been called upon to enter into a bond to keep the peace for the term of , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

---

### XI.—Bond for Good Behaviour.

(*See sections 109 and 110.*)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

(*Where a bond with sureties is to be executed, add*)—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

---

### XII.—Summons on Information of a probable Breach of the Peace.

(*See section 114.*)

To of

Whereas it has been made to appear to me by credible information that (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly authorized agent) at the Office of the Magistrate of

## SCHEDULE V—*continued.*

on the day of 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [*when sureties are required, add,* and also to give security by the bond of one (*or* two, *as the case may be*) surety (*or* sureties) in the sum of rupees (*each, if more than one*)], that you will keep the peace for the term of

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY TO KEEP THE PEACE.
(*See section 123.*)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name and address*) appeared before me in person (*or* by his authorized agent on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (or a bond with two sureties each in rupees ), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order.

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND SECURITY FOR GOOD BEHAVIOUR.
(*See section 123.*)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS it has been made to appear to me that (*name and description*) has been and is lurking within the district of having no ostensible means of subsistence (*or*, and that he is unable to give any satisfactory account of himself);

*or*

WHEREAS evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is an habitual robber (*or* house-breaker, &c., *as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees , and the said surety (*or* each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless he shall in the meantime comply with the said order by himself and his surety (or sureties) entering into the said bond, in which case the same shall be received and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V—*continued.*

### XV.—Warrant to discharge a Person imprisoned on Failure to give Security.

(*See sections 123 and 124.*)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is*).

Whereas (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since duly given security under section of the Code of Criminal Procedure,

*or*

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XVI.—Order for the Removal of Nuisances.

(*See section 133.*)

To (*name, description and address*).

Whereas it has been made to appear to me that you have caused an obstruction (*or* nuisance) to persons using the public roadway (*or other public place*) which, &c. (*describe the road or public place*), by, &c. (*state what it is that causes the obstruction or nuisance*) and that such obstruction (*or* nuisance) still exists;

*or*

Whereas it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (*or* comfort) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

*or*

Whereas it has been made to appear to me that you are the owner (*or* are in possession of *or* have the control over) a certain tank (*or* well *or* excavation) adjacent to the public way (*describe the thoroughfare*) and that the safety of the public is endangered by reason of the said tank (*or* well *or* excavation) being without a fence (*or* insecurely fenced);

*or*

Whereas, &c., &c. (*as the case may be*);

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at in the Court of on the day next, and to show cause why this order should not be enforced;

*or*

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c.;

*or*

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*; or to appear, &c.)

*or*

I do hereby direct and require you, &c., &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V—*continued.*

### XVII.—Magistrate's Order constituting a Jury.

(*See section 138.*)

Whereas on the day of , 18 , an order was issued to (*name*) requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me, by a petition bearing date the day of , for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, &c., of the five or more Jurors*) to the Jury to try and decide the said questions and do require the said Jury to report their decision within days from the date of this order at my office at .

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XVIII.—Magistrate's Notice and Peremptory Order after the Finding by a Jury.

(*See section 140.*)

To (*name, description and address*).

I hereby give you notice that the Jury duly appointed on the petition presented by you on the day of , have found that the order issued on the day of , requiring you (*state substantially the requisition in the order*), is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*), on peril of the penalty provided by the Indian Penal Code for disobedience thereto. XLV of 1860.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

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### XIX.—Injunction to provide against Imminent Danger pending Inquiry by Jury.

(*See section 142.*)

(To *name, description and address*).

Whereas the inquiry by a Jury appointed to try whether my order issued on the day of , 18 , is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safeguard*), pending the result of the local inquiry by the Jury. X of 1882.

Given under my hand and the seal of the Court, this day of 18

(*Seal.*) (*Signature*)

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### XX.—Magistrate's Order prohibiting the Repetition, &c., of a Nuisance.

(*See section 143.*)

To (*name, description and address*).

Whereas it has been made to appear to me that, &c. (*state the proper recital, guided by* Form No. XVI or Form No. XXI, *as the case may be*);

## SCHEDULE V—*continued.*

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXI.—Magistrate's Order to prevent Obstruction, Riot, &c.

(*See section 144.*)

To (*name, description and address*).

Whereas it has been made to appear to me that you are in possession (*or* have the management) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

*or*

Whereas it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

*or*

Whereas, &c., &c. (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road;

*or*

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXII.—Magistrate's Order declaring Party entitled to retain Possession of Land, &c., in Dispute.

(*See section 145.*)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true.

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or* their) possession in the meantime.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V—*continued.*

### XXIII.—Warrant of Attachment in the Case of a Dispute as to the Possession of Land, &c.

(*See section 146.*)

To the Police-officer in charge of the Police-station at [*or*, To the Collector of ].

Whereas it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) *or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

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### XXIV.—Magistrate's Order prohibiting the doing of anything on Land or Water.

(*See section 147.*)

A dispute having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or if the use is enjoyable only at particular seasons, say* "during the last of the seasons at which the same is capable of being enjoyed");

I do order that the said (*the claimant or claimants of possession*) or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or* they) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXV.—Bond and Bail-bond on a preliminary Inquiry before a Police-officer.

(*See section 169.*)

I, (*name*), of , being charged with the offence of , and after inquiry required to appear before the Magistrate of ,

*or*

and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at , in the Court of , on

## SCHEDULE V—*continued.*

the day of next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

I hereby declare myself (*or* we jointly and severally declare ourselves and each of us), surety (*or* sureties) for the above-said that he shall attend at , in the Court of , on the day of next (*or* on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

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### XXVI.—Bond to prosecute or give Evidence.

(*See section 170.*)

I, (*name*), of (*place*), do hereby bind myself to attend at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or* to prosecute and give evidence, *or* to give evidence) in the matter of a charge of against one *A. B.*, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

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### XXVII.—Notice of Commitment by Magistrate to Government Pleader.

(*See section 218.*)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. (*state the offence as in the charge*).

Dated this day of , 18 .

(*Signature.*)

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### XXVIII.—Charges.

(*See sections 221, 222, 223.*)

#### (I)—Charges with one Head.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

(*b*) That you, or on about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session *substitute* High Court].

On Penal Code, section 121.

XLV of 1860.

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

## SCHEDULE V—*continued.*

[*To be substituted for* (*b*) :—]

(2) That you, on or about the day of , at , with the intention of inducing the Hon'ble *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]. XLV of 1860.

On section 124.

(3) That you, being a public servant in the Department directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]. XLV of 1860.

On section 161.

(4) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]. XLV of 1860.

On section 166.

(5) That you, on or about the day of , at , in the course of the trial of , before stated in evidence that " ", which statement you either knew or believed to be false, *or* did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]. XLV of 1860.

On section 193.

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]. XLV of 1860.

On section 304.

(7) That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]. XLV of 1860.

On section 306.

(8) That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]. XLV of 1860.

On section 325.

(9) That you, on or about the day of , at , robbed [*state the name*] and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]. XLV of 1860.

On section 392.

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court]. XLV of 1860.

On section 395.

[*In cases tried by Magistrates substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* " by the said Court."]

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### (II)—Charges with two or more Heads.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows :—

(*b*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence

On section 241.

## SCHEDULE V—*continued.*

XLV of 1860. punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

*Secondly.*—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal XLV of 1860. Code, and within the cognizance of the Court of Session [*or* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*)]:—

On sections 302 and 304.

(2) *First.*—That you, on or about the day of , at committed murder by causing the death of , and thereby committed an offence punishable under section 302 XLV of 1860. of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

*Secondly.*—That you, on or about the day of , at , by causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal XLV of 1860. Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382.

(3) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cog- XLV of 1860. nizance of the Court of Session *or* High Court].

*Secondly.*—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence, punishable under section 382 of XLV of 1860. the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

*Thirdly.*—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence XLV of 1860. punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

*Fourthly.*—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable XLV of 1860. under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

(4) That you, on or about the day of , at , in the course of the inquiry into before , stated in evidence that " " and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ", one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian XLV of 1860. Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court."]

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### (III)—Charge for theft after a previous Conviction.

I, (*name and office of Magistrate, &c.*), hereby charge you (*name of accused person*) as follows:—

That you, on or about the day of , at committed theft, and thereby committed an offence punishable under section 379 o

## SCHEDULE V—*continued.*

the Indian Penal Code and within the cognizance of the Court of Session [*or* {High Court / Magistrate} *as the case may be*]. XLV of 1860.

And you the said (*name of accused*) stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the offence was convicted*) which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code. XLV of 1860. XLV of 1860.

And I hereby direct that you be tried, &c.

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### XXIX.—Warrant or Commitment on a Sentence of Imprisonment or Fine if passed by a Magistrate.

(*See sections 245 and 258.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar for 18 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or* sections) of the Indian Penal Code (*or* of Act ), and was sentenced to (*state the punishment fully and distinctly*); XLV of 1860.

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXX.—Warrant of Imprisonment on Failure to recover Amends by Distress.

(*See section 250.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*), and the same has been dismissed as frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his simple imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorise and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution. XLV

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V—*continued.*

### XXXI.—Summons to a Witness.

(*See sections 68 and 252.*)

To of

Whereas complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*state the offence concisely with time and place*) and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXXII.—Precept to District Magistrate to summon Jurors and Assessors.

(*See section 326.*)

To the District Magistrate of

Whereas a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A.M on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXXIII.—Summons to Assessor or Juror.

(*See section 328.*)

To (*name*) of (*place*).

Pursuant to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (*or* a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the day of next.

Given under my hand and the seal of office, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXXIV.—Warrant of Commitment under Sentence of Death.

(*See section 374.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas at the Session held before me on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calender at the said Session, was duly convicted of the offence of culpable homicide amount-

## SCHEDULE V—*continued.*

ing to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ; XLV of 1860.

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXXV.—Warrant of Execution on a Sentence of Death.

(*See section 381.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the Session held before me on the day , 18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death; and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorize and require you the said Superintendent (*or* Keeper) to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXXVI.—Warrant after a Commutation of a Sentence.

(*See sections 381 and 382.*)

To the Superintendent (*or* Keeper) of the Jail at .

Whereas at a Session held on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or, as the case may be*); XLV of 1860.

This is to authorize and require you the said Superintendent (*or* Keeper), safely to keep the said (*prisoner's name*) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

*or*

*if the mitigated sentence is one of imprisonment, say, after the words* "custody in the said jail" "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V—*continued.*

### XXXVII.—Warrant to levy a Fine by Distress and Sale.

(*See section 386.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

Whereas (*name and description of the offender*) was on the day of 18 , convicted before me of the offence of (*mention the offence concisely*), and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XXXVIII.—Warrant of Commitment in certain Cases of Contempt when a Fine is imposed.

(*See section 480.*)

To the Superintendent (*or* Keeper) of the Jail at ,

Whereas at a Court holden before me on this day (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the Superintendent (*or* Keeper) of the said Jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of 18

(*Seal.*) (*Signature.*)

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### XXXIX.—Magistrate's or Judge's Warrant of Commitment of Witness refusing to answer.

(*See section 485.*)

To (*name and designation of officer of Court.*)

Whereas (*name and description*) being summoned (*or* brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

## SCHEDULE V—*continued.*

This is to authorize and require you to take the said (*name*) into custody, and him safely keep in your custody for the space of days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

---

### XL.—Warrant of Imprisonment on Failure to pay Maintenance.

(*See section 488.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or* his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or* himself)] and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of : And thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment in the said jail for the period of ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XLI.—Warrant to enforce the payment of Maintenance by Distress and Sale.

(*See section 488.*)

To (*name and designation of the Police-officer or other person to execute the warrant.*)

Whereas an order has been duly made requiring (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees , and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V—*continued.*

### XLII.—Bond and Bail-bond on a preliminary Inquiry before a Magistrate.

(*See sections 496 and 499.*)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us, surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself (*or* we bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

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### XLIII.—Warrant to discharge a Person imprisoned on Failure to give Security.

(*See section 500.*)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is.*)

Whereas (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure;

X of 1882.

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

---

### XLIV.—Warrant of Attachment to enforce a Bond.

(*See section 514.*)

To the Police-officer in charge of the Police-station at

Whereas (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*); and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him;

This is to authorize and require you to attach any moveable property of the said (*name*) that you may find within the district of , by seizure and detention, and, if the said

## SCHEDULE V—*continued.*

amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realize the amount aforesaid; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XLV.—Notice to Surety on Breach of a Bond.

(*See section 514.*)

To of .

Whereas on the day of , 18 , you became surety for (*name*) of (*place*) that he should appear before this Court on the day of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XLVI.—Notice to Surety of Forfeiture of Bond for good Behaviour.

(*See section 514.*)

To of .

Whereas on the day of , 18 , you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XLVII.—Warrant of Attachment against a Surety.

(*See section 514.*)

To of .

Whereas (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the district of , by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

## SCHEDULE V—*continued.*

### XLVIII.—Warrant of Commitment of the Surety of an Accused Person admitted to bail.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*) and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*);

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### XLIX.—Notice to the Principal of Forfeiture of a Bond to keep the Peace.

(*See section 514.*)

To (*name, description and address*).

Whereas on the day of , 18 , you entered into a bond not to commit, &c., (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

---

### L.—Warrant to attach the Property of the Principal on Breach of a Bond to keep the Peace.

(*See section 514.*)

To (*name and designation of Police-officer*), at the Police-station of

Whereas (*name and description*) did on the day of , 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, &c. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

## SCHEDULE V—*concluded.*

### LI.—Warrant of Imprisonment on Breach of a Bond to keep the Peace.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (*or* Keeper) of the said Civil Jail, to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

---

### LII.—Warrant of Attachment and Sale on Forfeiture of Bond for Good Behaviour.

(*See section 514.*)

To the Police-officer in charge of the Police-station at

Whereas (*name, description and address*) did on the day of , 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of , whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the district of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

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### LIII.—Warrant of Imprisonment on Forfeiture of Bond for Good Behaviour.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas (*name, description and address*) did on the day of , 18 give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (*or* Keeper,) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

# THE INDIAN TARIFF ACT, 1882.

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SCHEDULE I.—ACTS REPEALED.

SCHEDULE II.—IMPORT TARIFF.

SCHEDULE III.—EXPORT TARIFF.

## ACT No. XI OF 1882.

*Received the Governor General's assent on the 10th March, 1882.*

## An Act to amend the law relating to Customs Duties, and for other purposes.

WHEREAS it is expedient to amend the law relating to the duties of customs on goods imported and exported by sea, and to provide for the levy of duties on goods crossing the frontier of certain Foreign European Settlements in India and of the territories of certain Native Chiefs and for fixing a maximum duty of excise on spirit manufactured in British India; It is hereby enacted as follows:— Preamble

1. This Act may be called "The Indian Tariff Act, 1882." Short title.

It extends to the whole of British India except Aden; and it shall come into force on the passing thereof. Local extent. Commencement.

(*Secs. 2-5.*)

Repeal of Acts.

2. The Acts mentioned in the first schedule hereto annexed are repealed to the extent specified therein:

Saving clause.

But all notifications published, and rules and orders made, under any of such Acts, and now in force, shall, so far as they are consistent herewith, be deemed to have been respectively published and made hereunder:

All references made to the Indian Tariff Act, 1875, in Acts or Regulations passed before this Act comes into force, shall be deemed to be made to this Act: XVI of 1875.

And nothing herein contained authorizes the levy of duties of customs on any article carried from one port in British India to another, except salt, opium and spirit.

Duties specified in schedules to be levied.

3. There shall be levied and collected, in every port to which this Act applies, the duties specified in the second and third schedules hereto annexed.

Export of pepper from Cochin.

4. On all pepper exported by sea from the port of Cochin there shall be levied such duty not exceeding nine rupees per khandí as the Governor of Fort Saint George in Council from time to time determines; and at the close of each year, or as soon thereafter as may be convenient, the Customs-collector at the said port shall, after deducting the expenses of collection, pay the duty collected under this section to the Governments of Travancore and Cochin in such proportion and in such manner as the Governor of Fort Saint George in Council from time to time directs.

Duties on goods crossing frontiers—

5. Duties of customs shall be levied at the rates respectively prescribed in the second and third schedules hereto annexed on goods passing by land out of or into—

of Foreign European Settlements in Presidency of Madras, of foreign territory.

(*a*) Foreign European Settlements situate on the line of coast within the limits of the Presidency of Fort Saint George;

(*b*) any territory declared, under the power next hereinafter conferred, to be foreign territory.

Power to declare territory foreign.

Subject to the control of the Governor General in Council, the Governor of Fort Saint George in Council and the Governor of Bombay in Council may, from time to time, by notification in the local official Gazette, respectively declare that the territory of any Native Chief, situate within, or bordering on, the territories respectively administered by such Governors, but not subject to the jurisdiction of the Courts and Civil authorities of such territories, shall be deemed, for the purposes of this section, to be foreign territory.

The Governor General in Council may, from time to time, by notification in the *Gazette of India*, declare that the territory of any other Native Chief shall be deemed, for the purposes of this section, to be foreign territory.

(*Secs. 7-9. Schedule I.—Acts repealed.*)

6. And whereas it is expedient that the duty of excise on spirit distilled in British India should bear a due proportion to the customs-duty on spirit imported into British India, it is hereby further enacted as follows :— Excise-duty on spirit distilled in British India.

Subject to any general rules or special orders which the Governor General in Council may, from time to time, make in this behalf, the Local Government may, from time to time, by notification in the local official Gazette, fix the duty of excise leviable on spirit manufactured in all or any of the distilleries situate in the territories under its administration, or in any part of such territories, at any rate not exceeding the rate fixed for imported spirit by the second schedule hereto annexed ;

and all provisions now in force as to the levy of duty now chargeable on spirit shall apply to spirit upon which the duty declared under this section has not been paid.

XVI of 1863. In Act No. XVI of 1863, section 1, for the words "calculated at ten" the words "not exceeding five" shall be substituted.

7. Spirit, opium and salt imported from any port in British India, and protected by the certificate of an officer empowered in that behalf by the Governor General in Council or the Local Government, are chargeable with only the amount, if any, by which the duty leviable thereon under the second schedule hereto annexed exceeds the duty shown by such certificate to have been already paid in respect thereof. Duty on spirit, opium and salt when protected by a certificate.

The amount, if any, paid to the Government as the price of such opium or salt is not duty within the meaning of this section.

VI of 1844 XXIX of 1857. 8. So far as regards the Presidency of Fort Saint George, the unrepealed provisions of Act No. VI of 1844, and so far as regards the Presidency of Bombay, the unrepealed provisions of Act No. XXIX of 1857, relating to the levy of duties and to dutiable goods, shall, *mutatis mutandis*, apply to duties levied and goods liable to duty under or by virtue of section 5, clause (*b*). Application of certain provisions as to duties and goods.

9. All notifications published hereunder may be cancelled by the authority publishing the same. Power to cancel notifications.

## SCHEDULE I.

### Acts Repealed.

| Number and year. | Short title. | Extent of repeal. |
|---|---|---|
| XI of 1869 . . | The Land Customs (Madras and Bombay) Act, 1869. | So much as has not been repealed. |
| XVI of 1875 . . | The Indian Tariff Act, 1875 . . | Ditto. |
| XI of 1878 . . | The Indian Arms Act, 1878 . . | Section 8 and the second schedule. |

(*Scedule II.—Import Tariff.*)

## SCHEDULE II.

### IMPORT TARIFF.

| No. | Names of Articles. | Per | Tariff valuation. | Rate of Duty. | |
|---|---|---|---|---|---|
| 1 | ARMS, AMMUNITION AND MILITARY STORES— | | | | |
| | Fire-arms and parts thereof— | | | Rs. | As. |
| | 1. Fire-arms other than pistols, for each . . | ... | ... | 50 | 0 |
| | 2. Barrels for the same, whether single or double, for each . . . . | ... | ... | 30 | 0 |
| | 3. Pistols, for each . . | ... | ... | 15 | 0 |
| | 4. Barrels for the same, whether single or double, for each . . . . | ... | ... | 10 | 0 |
| | 5. Springs used for fire-arms, for each . . . | ... | ... | 8 | 0 |
| | 6. Gunstocks, sights, blocks and rollers, for each . | ... | ... | 5 | 0 |
| | 7. Revolver-breeches, for each cartridge they will carry . | ... | ... | 2 | 0 |
| | 8. Extractors, nippers, heel-plates, pins, screws, tangs, bolts, thumb-pieces, triggers, trigger-guards, hammers, pistons, plates, and all other parts of a fire-arm not herein otherwise provided for, and all tools used for cleaning or putting together or loading the same, for each . | ... | ... | 1 | 8 |
| | 9. Machines for making or loading or closing cartridges, for each . . | ... | ... | 10 | 0 |
| | 10. Machines for capping cartridges, for each . . | ... | ... | 2 | 8 |
| | *Exception I.*—Articles falling under the 5th, 6th, 8th, 9th, or 10th head of the above list, when they appertain to a fire-arm falling under the 1st or 3rd head, and are fitted into the same case with such fire-arm, are free. | | | | |
| | *Exception II.*—Arms forming part of the regular equipment of an officer entitled to wear diplomatic, military or police uniform, and a revolver or a pair of pistols accompanying a military officer, are free. | | | | |

(*Schedule II.—Import Tariff.*)

## SCHEDULE II—*continued.*

| No. | Names of Articles. | Per | Tariff valuation. | Rate of Duty. |
|---|---|---|---|---|
| 1 | ARMS, AMMUNITION AND MILITARY STORES—*contd.* | | | |
| | *Proviso* 1.—No duty in excess of ten per cent. *ad valorem* shall be levied upon any of the articles mentioned in the above list when they are imported in reasonable quantity, for his own private use, by any person lawfully entitled to possess the same. | | | |
| | *Proviso* 2.—When any articles which have been otherwise imported, and upon which duty has been levied or is leviable under this number, are purchased retail from the importer by a person lawfully entitled as aforesaid, in reasonable quantity, for his own private use, the importer may apply to the Customs-collector for a refund or remission (as the case may be) of so much of the duty thereon as is in excess of ten per cent. *ad valorem;* and if such Collector is satisfied as to the identity of the articles, and that such importer is in other respects entitled to such refund or remission, he shall grant the same accordingly. | | | |
| | | | Rs. A. | |
| | Gunpowder, common . . | lb. | 0 5 | 10 per cent. |
| | " sporting . | lb. | 1 0 | |
| | All other sorts . . . | ... | *Ad valorem* | |
| 2 | LIQUORS— | | | |
| | Ale, beer and porter, except when condensed or concentrated . . . . | Impl. Gallon or six quart bottles . . | ... | One anna. |
| | Cider, and other fermented liquors . . . . | | | |
| | Liqueurs . . . . | Ditto . . | ... | Rs. 4. |
| | Spirit intended to be used exclusively in arts or manufactures, or in chemistry, and which has been rendered effectually and permanently unfit for human consumption . . . . | ... | *Ad valorem* | 5 per cent. |
| | Spirit, when used in drugs, medicines or chemicals in a proportion less than twenty per cent. of spirit of the strength of London proof . | ... | *Ad valorem* | 5 per cent. |

(*Schedule II.—Import Tariff. Schedule III.—Export*

## SCHEDULE II—*concluded.*

| No. | Names of Articles. | Per | Tariff valuation. | Rate of Duty. |
|---|---|---|---|---|
| 2 | LIQUORS—*contd.* | | | |
| | Spirit, when so used in a proportion of twenty per cent. and upwards . . . | Impl. Gallon or six quart bottles of the strength of London proof . | ... | Rs. 4, and the duty to be increased in proportion as the strength of the spirit exceeds London proof. |
| | Spirit, perfumed, in wood, or in bottles containing more than four ounces . . | Ditto . . | ... | |
| | Spirits, other sorts . . | Ditto . . | | |
| | Wines— | | | |
| | Champagne and all other sparkling wines . . | Impl Gallon or six quart bottles . . | ... | Rs. 2-8. |
| | All other sorts of wines . | Ditto . . | ... | Re. 1. |
| 3 | OPIUM NOT COVERED BY A GOVERNMENT PASS . . | Sér of 80 tolas . | ... | Rs 24. |
| 4 | SALT . . . . . | Indian maund of 82⅔ lbs. avoirdupois weight | ... | The rate at which excise duty is for the time being leviable on salt manufactured in the place where the import takes place. |

## SCHEDULE III.

### EXPORT TARIFF.

| Name of Article. | Per | Tariff valuation. | Rate of Duty. |
|---|---|---|---|
| RICE, whether husked or unhusked | Indian maund of 82⅔ lbs. avoirdupois weight. | ... | 3 annas. |

# THE INDIAN SALT ACT, 1882.

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THE SCHEDULE—ENACTMENTS REPEALED.

## ACT No. XII of 1882.

*Received the Governor General's assent on the 10th March, 1882.*

# An Act for regulating the duty on Salt, and for other purposes.

WHEREAS it is expedient to amend the law relating to the levy of duty on salt, and to the import and transit of salt, and the manufacture of salt and saltpetre, into, over and in British India; It is hereby enacted as follows:— Preamble.

## CHAPTER I.

### PRELIMINARY.

1. This Act may be called "The Indian Salt Act, 1882"; and it shall come into force at once. Short title. Commencement.

This section, sections 2, 7 and 8, and so much of this Act as refers to offences against any of its provisions or against any rules made under it, extend to the whole of British India; Local extent.

The rest of this Act extends to the territories for the time being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces and Ajmír and Mairwára, *to the Province of Sindh*[a], to the Districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor General in Central India;

and any portion of this Act, other than the portions specified in the second paragraph of this section, may be extended, by order of the Governor General in Council published in the *Gazette of India*, to any part of British India other than the territories, *Province*[b] and Districts mentioned in the third paragraph of this section. Power to extend Act.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof; but all rules made, licenses and passes granted, prices and duties fixed, notifications published and powers conferred under any such enactment and now in force shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published and conferred hereunder. Repeal of enactments.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

the expression "the said territories" means the territories to which the section of this Act in which that expression occurs for the time being extends; "the said territories".

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[a], [b] For power to repeal the words in italics, see Act XX of 1884.

"Assistant Commissioner":

"Assistant Commissioner" means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the powers of an Assistant Commissioner under this Act;

"Salt-revenue officer":

"Salt-revenue officer" means any officer of the Northern India Salt Department, and also includes any person invested by the Local Government with any of the powers of a Salt-revenue officer under this Act;

"Saltpetre."

"Saltpetre" includes rasí, sajjí and all other substances manufactured from saline earth, and khárí-nún and every form of sulphate or carbonate of soda; and

"Manufacture of salt":

"manufacture of salt" includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence.

Powers of Commissioner of Division by whom to be exercised.

**4.** The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer as the Governor General in Council may from time to time appoint in this behalf.

Commissioner of Northern India Salt-revenue.

**5.** At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor General in Council.

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## CHAPTER II.

### Manufacture and Refining of Salt and Saltpetre.

Power of Governor General in Council—to regulate manufacture and refining of salt and saltpetre; to fix fees for licenses;

**6.** The Governor General in Council may, from time to time, by rule—

(*a*) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories;

(*b*) fix fees for the following licences, not exceeding in the case of each such license the amount hereinafter mentioned :—

| | Rs. |
|---|---|
| License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining . . . . | 50 |
| License to manufacture saltpetre . . . . . | 2 |
| License to manufacture sulphate of soda (*khárí-nún*) by solar heat in evaporating pans . . . . . | 10 |
| License to manufacture sulphate of soda (*khárí-nún*) by artificial heat . | 2 |
| License to manufacture other saline substances . . . . . | 2 |

(*c*) determine the manner, time and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories ; *to regulate the collection of duties ;*

(*d*) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area ; *to regulate possession of salt in vicinity of places where saltpetre is manufactured ;*

(*e*) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area. *to regulate possession of salt in vicinity of places where salt is manufactured*

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## CHAPTER III.

### Duty and Price of Salt.

7. The Governor General in Council may, from time to time, by rule consistent with this Act— *Power of Governor General in Council—*

(*a*) impose a duty not exceeding three rupees per maund of 82⅔ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India ; *to impose a duty on salt manufactured or imported by land ;*

(*b*) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted ; *to reduce or remit duties ;*

(*c*) fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the Government of India shall be sold. *to fix minimum price of salt excavated, &c., by Government.*

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

8. Subject to any general rules or special orders which the Governor General in Council may from time to time make in this behalf, the Local Government may, from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured or sold by or on behalf of such Local Government shall be sold. *Power of Local Government to fix minimum price of salt excavated, &c.*

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## CHAPTER IV.

### Offences against the Salt-revenue.

9. Whoever commits any of the following offences (namely) :— *Penalties.*

(*a*) does anything in contravention of this Act or of any rule made hereunder ;

(*b*) evades payment of any duty or charge payable under this Act or any such rule; or

(*c*) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of, any of the offences mentioned in clauses (*a*) and (*b*) of this section, XLV of 1860.

shall for every such offence be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both;

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

Punishment on second and subsequent convictions.

**10.** Any person convicted of an offence under section 9, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875,[a] or under any enactment repealed by that Act, VIII of 1875. shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9;

and every such person shall, upon every subsequent conviction of an offence under section 9, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

Charge by whom to be preferred.

**11.** A charge of an offence under section 9, or under section 11 of the Inland Customs Act, 1875,[a] shall not be entertained except on the complaint VIII of 1875. of an Assistant Commissioner or other Salt-revenue officer not inferior in rank to a Sub-Inspector,

Limitation.

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

Jurisdiction.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

Confiscation of articles in respect of which offence committed.

**12.** All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five sérs in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report

[a] Repealed by this Act.

of any Salt-revenue officer, or on such inquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sérs in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sérs, and may also confiscate any vessel, package or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

Power to levy additional duty as penalty.

**13.** The Governor General in Council may, from time to time, by rule, direct that any Salt-revenue officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act.

The imposition of every such penalty shall be at once reported, if the salt in respect of which an offence has been committed exceeds five sérs in weight, to the Commissioner of the Division in which such penalty is imposed, and, if such salt does not exceed five sérs in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

Punishment for connivance at offences mentioned in section 9.

**14.** Any zamíndár or other proprietor of land, and any agent of a zamíndár or proprietor of land, who wilfully connives at any offence mentioned in section 9, shall for every such offence be punishable, by any Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

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## CHAPTER V.

### Powers of Stoppage, Search, Seizure and Arrest.

Power to

**15.** Any Salt-revenue officer empowered in this behalf by the Local Gov-

search places where article manufactured under license.

ernment may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to detain suspected person and to seize goods liable to confiscation.

**16.** Any Salt-revenue officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act;

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section 9 has been committed, or that any duty is payable, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

Power to arrest.

**17.** Any Salt-revenue officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

Procedure of officer having reason to believe unlawful manufacture.

**18.** Whenever any Salt-revenue officer, not inferior in rank to a Sub-Inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place,

such officer shall first record in writing (so far as may be practicable) (*a*) the name, residence, and calling of the informant (if any); (*b*) the locality and description of the house, boat or place where the officer believes that the salt or saltpetre is being so manufactured, refined or stored; (*c*) the name of the person by or for whom the salt or saltpetre is so manufactured, refined or stored; and (*d*) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined or stored;

and may then summon in writing the officer in charge of the Police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him;

Power to enter and search.

and may then, after sunrise and before sunset (but always in the presence of an officer of Police not inferior in rank to a head constable), enter and search any house, boat or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined or stored;

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry;

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre;

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture, refinement, or storing of such salt or saltpetre, or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.

X of 1882.

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched.

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

Failure of Police-officer to attend.

**19.** Any officer in charge of a Police-station who, on application in writing made by a Salt-revenue officer to attend for any of the purposes specified in section 18, refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees.

Report of arrest, seizure and search.

**20.** Whenever a Salt-revenue officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act,

or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate), within forty-eight hours next after such arrest, seizure or entry, make a full report of all the particulars of such arrest, seizure or entry to his official superior for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of Police attending any search made under section 18 shall report the same to his official superior.

Procedure in respect of articles seized.

**21.** Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sérs in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section 12.

If the article seized does not exceed five sérs in weight, such Assistant Commissioner may dispose of the case himself under the said section.

Procedure on detention of article subject to additional duty.

22. Any article in respect of which a penalty is imposed under section 13 may be detained depending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section:

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on such article to, the Salt-revenue officer detaining the same, such article shall be at once released.

When an article is so detained it shall on the receipt of the said order be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces, or declines to sanction, the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

Procedure in respect of person arrested.

23. Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section 20) either send, with all convenient despatch, the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Officers required to assist Salt-revenue officers.

24. All officers of Police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the Salt-revenue officers in the execution of this Act.

**25.** Any Salt-revenue officer who—

Vexatious search, seizure, &c., by Salt-revenue officer.

(*a*) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;

(*b*) vexatiously and unnecessarily detains, searches or arrests any person;

(*c*) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(*d*) commits, as such officer, any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall for every such offence be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false information and so causing a search to be made under this Act shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both.

**26.** The Governor General in Council may, from time to time, make rules, consistent with this Act, to regulate the seizure, disposal and destruction of things liable to be seized under this Act.

Power to regulate seizures and disposal of things seized.

Such rules may, among other matters, provide—

(*a*) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale;

(*b*) that when anything is seized and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale;

(*c*) that the surplus-proceeds of a sale under clause (*a*) or clause (*b*) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

## CHAPTER VI.

### MISCELLANEOUS.

Power to prohibit import and transit of salt.

**27.** The Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

Further matters for which Governor General in Council may make rules.

**28.** In addition to the rules which the Governor General in Council is hereinbefore empowered to make, he may from time to time make rules, consistent with this Act, to regulate the following matters, namely :—

(*a*) the persons by whom, and the time, place and manner at or in which, anything to be done under this Act shall be done;

(*b*) the cases in which and the officers to whom, and the conditions subject to which, orders given by Salt-revenue officers under this Act shall be appealable;

(*c*) the fee to be charged on account of any license, pass, certificate, dákhilá, rawána or other such document issued under this Act ;

and generally to carry out the provisions herein contained.

Publication of rules.

**29.** All rules made under this Act shall be published in the *Gazette of India*, and shall thereupon have the force of law.

Power to confer powers of Assistant Commissioner and Salt-revenue officers.

**30.** Subject to the provisions herein contained, and to any rules for the time being in force made by the Governor General in Council, the Local Government or the Commissioner of Northern India Salt-revenue may invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue officers.

Amendment of Madras Act VI of 1871.

Levy of duty on salt.

**31.** For section 11 of the Madras Salt Excise Act, 1871, the following shall be substituted :— M. VI of 1871.

"11. The excise-duty on salt manufactured in any district, or part of a district, to which this Act may be extended, shall be paid under such orders as the Board of Revenue from time to time makes in this behalf; but no such duty shall be leviable until the salt is about to be removed from the place of storage, and no salt shall be so removed without a permit authorizing its removal from store, and such permit shall specify the quantity to be removed and the excise-duty levied or due thereon."

# SCHEDULE

(*See section 2.*)

## ENACTMENTS REPEALED.

### ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

| Number and year | Short title | Extent of repeal |
|---|---|---|
| VIII of 1875 . . | The Inland Customs Act, 1875. | The whole. |
| II of 1876 . . | The Burma Land and Revenue Act, 1876. | Section 39, clause (*b*), and in clause (*c*) of the same section the words and letter "under clause (*b*)." |
| XVIII of 1877 . . | The Salt Act, 1877 . | The whole. |

### REGULATION.

| Number and year | Short title | Extent of repeal |
|---|---|---|
| III of 1877 . . | The Ajmír Laws Regulation, 1877. | Sections 36 and 37. |

### ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

| Number and year. | Short title | Extent of repeal. |
|---|---|---|
| VII of 1864 . . | The Salt Act, 1864 . | Section 9. |

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